

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE EXECUTION, DELIVERY AND SALE OF CERTIFICATES OF PARTICIPATION, 2006 SERIES A (CITY OF MILPITAS SEWER FINANCING) IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$11,000,000 TO PROVIDE FINANCING FOR SEWER SYSTEM IMPROVEMENTS, AND APPROVING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City of Milpitas (the “City”) owns and operates a system for the collection of sewage within the service area of the City (the “Sewer System”), and the City wishes to provide funds at this time to finance a new main sewage pump station and to fund related improvements to the Sewer System (the “Project”); and

WHEREAS, the City wishes to authorize the execution, delivery and sale of certificates of participation in the aggregate principal amount of not to exceed \$11,000,000 at this time for the purpose of financing the Project, and the City has requested that the Milpitas Public Financing Authority (the “Authority”) assist it in such proceedings; and

WHEREAS, the Authority has been formed for the purpose of providing financial assistance to the City in the construction of public capital improvements;

NOW, THEREFORE, IT IS ORDERED, as follows:

Section 1. Approval of Financing Plan and Related Documents. The City Council hereby approves the issuance and sale of Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) in the aggregate principal amount of not to exceed \$11,000,000 (the “Certificates”) for the purposes described above. To that end, the City Council hereby approves each of the following financing documents in substantially the respective forms on file with the City Clerk, together with any changes therein or additions thereto approved by the Mayor, the City Manager or the Director of Financial Services (each, an “Authorized Officer”):

- Installment Sale Agreement between the City and the Authority, under which the Authority agrees to provide financing for the Project, and to sell the completed Project to the City in consideration of the payment by the City of semiannual installment payments as the purchase price, to be made from the net revenues of the Sewer System.
- Trust Agreement among the City, the Authority and U.S. Bank National Association, as trustee (the “Trustee”), whereby the Trustee agrees to execute and deliver the Certificates and to deposit the proceeds thereof in a construction fund to be applied to the payment of project costs upon requisitions of the City.

The Authorized Officers are hereby authorized and directed for and in the name and on behalf of the City to execute the final form of each of the foregoing documents, and the City Clerk is hereby authorized and directed to attest to the final form of each of the foregoing documents. Execution of each of the foregoing documents by the Authorized Officers shall be conclusive evidence of the approval of any changes therein or additions thereto by an Authorized Officer. The schedule of installment payments attached to the Installment Sale Agreement shall correspond to the payments of principal and interest represented by the Certificates, to be determined upon the sale thereof as set forth in Section 2.

Section 2. Sale of Certificates. The City Council hereby authorizes and directs the sale of the Certificates by competitive public bidding. Bids shall be received, and the Certificates shall be sold, subject to the terms and

conditions set forth in the Notice Inviting Bids in substantially the form on file with the City Clerk together with any additions thereto or changes therein deemed advisable by an Authorized Officer. An Authorized Officer is hereby authorized and directed to accept the best bid determined in accordance with the Notice Inviting Bids, in the name and on behalf of the City.

As provided in Section 53692 of the Government Code the law firm of Jones Hall, as bond counsel to the City, is hereby authorized and directed to cause an appropriate notice of the City's intention to sell the Certificates to be published once in *The Bond Buyer*. Such publication shall be made not later than 5 days prior to the date set for receipt of bids on the Certificates.

Section 3. Official Statement. The City Council hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the preliminary Official Statement describing the Certificates in the form on file with the City Clerk. An Authorized Officer is hereby authorized, at the request of the purchaser of the Certificates, to execute an appropriate certificate affirming the City Council's determination that the preliminary Official Statement has been deemed nearly final within the meaning of such Rule. Distribution of the preliminary Official Statement by E. Wagner & Associates, Inc., as the financial advisor to the City, is hereby approved. An Authorized Officer is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by an Authorized Officer shall be conclusive evidence of approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official Statement by the winning bidder for the Certificates. The final Official Statement shall be executed in the name and on behalf of the City by an Authorized Officer.

Section 4. Bank Qualified Designation. The City Council hereby elects to designate the Certificates as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code in the event that the aggregate principal amount thereof is not greater than \$10,000,000. The City Council hereby finds and determines that, in the event that the aggregate principal amount of the Certificates is not greater than \$10,000,000, the aggregate face amount of all tax exempt obligations (other than private activity bonds) issued by the City (and all subordinate entities thereof) during calendar year 2006 is not expected to exceed \$10,000,000.

Section 5. Official Actions. The Mayor, the City Manager, the Director of Financial Services, the City Clerk or their designees are authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this resolution any officer of the City is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

RESOLUTION NO. ____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MILPITAS PUBLIC FINANCING
AUTHORITY AUTHORIZING THE EXECUTION, DELIVERY AND SALE OF CERTIFICATES OF
PARTICIPATION, 2006 SERIES A (CITY OF MILPITAS SEWER FINANCING) IN THE
PRINCIPAL AMOUNT OF NOT TO EXCEED \$11,000,000 TO PROVIDE FINANCING FOR SEWER
SYSTEM IMPROVEMENTS, AND APPROVING RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City of Milpitas (the “City”) owns and operates a system for the collection of sewage within the service area of the City (the “Sewer System”), and the City wishes to provide funds at this time to finance a new main sewage pump station and to fund related improvements to the Sewer System (the “Project”); and

WHEREAS, the City wishes to authorize the execution, delivery and sale of certificates of participation in the aggregate principal amount of not to exceed \$11,000,000 at this time for the purpose of financing the Project, and the City has requested that the Milpitas Public Financing Authority (the “Authority”) assist it in such proceedings; and

WHEREAS, the Authority has been formed for the purpose of providing financial assistance to the City in the construction of public capital improvements;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Milpitas Public Financing Authority as follows:

Section 1. Approval of Financing Plan and Related Documents. The Board of Directors hereby approves the issuance and sale of Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) in the aggregate principal amount of not to exceed \$11,000,000 (the “Certificates”) for the purposes described above. To that end, the Board of Directors hereby approves each of the following financing documents in substantially the respective forms on file with the Secretary, together with any changes therein or additions thereto approved by the Chairperson, the Executive Director or the Treasurer (each, an “Authorized Officer”):

- Installment Sale Agreement between the City and the Authority, under which the Authority agrees to provide financing for the Project, and to sell the completed Project to the City in consideration of the payment by the City of semiannual installment payments as the purchase price, to be made from the net revenues of the Sewer System.
- Trust Agreement among the City, the Authority and U.S. Bank National Association, as trustee (the “Trustee”), whereby the Trustee agrees to execute and deliver the Certificates and to deposit the proceeds thereof in a construction fund to be applied to the payment of project costs upon requisitions of the City.

The Authorized Officers are hereby authorized and directed for and in the name and on behalf of the Authority to execute the final form of each of the foregoing documents, and the Secretary is hereby authorized and directed to attest to the final form of each of the foregoing documents. Execution of each of the foregoing documents by the Authorized Officers shall be conclusive evidence of the approval of any changes therein or additions thereto by an Authorized Officer. The schedule of installment payments attached to the Installment Sale Agreement shall correspond to the payments of principal and interest represented by the Certificates, to be determined upon the sale thereof as set forth in Section 2.

Section 2. Sale of Certificates. The Board of Directors hereby authorizes and directs the sale of the Certificates by competitive public bidding. Bids shall be received, and the Certificates shall be sold, subject to the terms and conditions set forth in the Notice Inviting Bids in substantially the form on file with the Secretary together with any additions thereto or changes therein deemed advisable by an Authorized Officer. The best bid shall be determined in accordance with the Notice Inviting Bids, and shall be accepted by the City in accordance with the resolution of the City Council.

Section 3. Official Statement. The Board of Directors hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the preliminary Official Statement describing the Certificates in the form on file with the Secretary. Distribution of the preliminary Official Statement by the financial advisor in connection with the sale of the Certificates is hereby approved. The Board of Directors hereby authorizes the distribution of the final Official Statement by the winning bidder for the Certificates.

Section 4. Official Actions. The Chairman, the Executive Director, the Treasurer, the Secretary, or their designees, are authorized and directed in the name and on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved pursuant to this Resolution. Whenever in this resolution any officer of the Authority is directed to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

Section 5. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, Agency Secretary

Jose S. Esteves, Chair

APPROVED AS TO FORM:

Steven T. Mattas, Agency Counsel

PRELIMINARY OFFICIAL STATEMENT DATED OCTOBER __, 2006**NEW ISSUE - BOOK-ENTRY ONLY****RATINGS: (Insured): S&P: “___”****Moody's: “___”****(See “CONCLUDING INFORMATION - Ratings” herein.)**

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Special Counsel, subject, however to certain qualifications described herein, under existing law, the portion of Installment Payments designated as and comprising interest and received by the owners of the Certificates is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings[confirm: and the Installment Sale Agreement is a "qualified tax-exempt obligation" within the meaning of section 265(b)(3) of the Internal Revenue Code of 1986.] See “CONCLUDING INFORMATION – Tax Matters” herein with respect to tax consequences of the Certificates.

\$ _____
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CITY OF MILPITAS
Certificates of Participation, 2006 Series A
(City of Milpitas Sewer Financing)
[(Bank Qualified)]

Dated: Date of Delivery**Due: November 1, as shown on inside**

The Certificates evidence and represent direct, undivided fractional interests in certain Installment Payments (the “Installment Payments”), to be made by the City of Milpitas (the “City”) pursuant to an Installment Sale Agreement, dated as of November 1, 2006 (the “Installment Sale Agreement”), between the City and the Milpitas Public Financing Authority (the “Authority”). The Authority, for the benefit of the Owners of the Certificates, has assigned, among other things, its right to receive Installment Payments to the Trustee.

The payment of Installment Payments is secured by a pledge of the Net Revenues (as defined herein) of the City’s Sewer System (the “Sewer System”). The Installment Sale Agreement authorizes the City to incur additional debt secured by a pledge of Net Revenues on a parity with the Installment Payments.

The Certificates are being issued (i) to finance certain sewer facilities of the City of Milpitas (the “City”) (see “THE PROJECT” herein), (ii) to fund a Reserve Fund for the Certificates, and (iii) to pay certain costs of executing and delivering the Certificates (see “ESTIMATED SOURCES AND USES OF FUNDS” herein).

The Certificates will be executed and delivered as fully registered certificates in book-entry form only, initially registered in the name of Cede & Co., New York, New York, as nominee of The Depository Trust Company (“DTC”), New York, New York. Purchasers will not receive certificates representing their interest in the Certificates. Individual purchases of the Certificates will be in principal amounts of \$5,000 or in any integral multiples of \$5,000. Interest represented by the Certificates will be payable on May 1 and November 1 of each year, commencing May 1, 2007 (the “Payment Dates”), and principal represented by the Certificates will be paid on the dates set forth in the Maturity Schedule below. Payments of principal and interest with respect to the Certificates will be paid by U.S. Bank National Association, as trustee (the “Trustee”), to DTC for subsequent disbursement to DTC Participants who will remit such payments to the Beneficial Owners of the Certificates.

The Certificates are subject to prepayment prior to their scheduled payment dates as described herein. See “THE CERTIFICATES” herein.

The scheduled payment of principal of and interest on the Certificates when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Certificates by _____ (see “CERTIFICATE INSURANCE” herein).

MATURITY SCHEDULE

See inside front cover

This cover page contains information for general reference only, and is not a summary of the security or terms of this issue. Investors must read the entire Official Statement, including the section entitled “RISK FACTORS,” for a discussion of special factors which should be considered, in addition to the other matters set forth herein, in considering the investment quality of the Certificates. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.

THE CITY’S OBLIGATION TO MAKE INSTALLMENT PAYMENTS IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM NET REVENUES AND OTHER FUNDS PROVIDED FOR IN THE INSTALLMENT SALE AGREEMENT. NEITHER THE CERTIFICATES NOR THE OBLIGATION OF THE CITY TO MAKE INSTALLMENT PAYMENTS CONSTITUTES A DEBT OF THE CITY OR OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF

* Preliminary; subject to change.

WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, OR AN OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

The Certificates are offered when, as and if sold, executed and delivered, subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Special Counsel. Jones Hall is also serving as Disclosure Counsel. Certain legal matters will be passed upon for the Authority and the City by the City Attorney. It is anticipated that the Certificates in book-entry form, will be available for delivery to DTC in New York, New York, on or about November __, 2006.

Date: October __, 2006

MATURITY SCHEDULE

Maturity Date (November 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP† (_____)	Maturity Date (November 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP† (_____)
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\$_____ % Term Certificates Due November 1, _____ – Yield: _____ %; CUSIP†: _____
\$_____ % Term Certificates Due November 1, _____ – Yield: _____ %; CUSIP†: _____

† Copyright 2006, American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the City nor the Underwriter assumes any responsibility for the accuracy of these CUSIP data.

CITY OF MILPITAS, CALIFORNIA

City Council

Jose S. Esteves, *Mayor*
Armando Gomez, *Vice Mayor*
Robert Livingood, *Councilmember*
Althea Polanski, *Councilmember*
Debbie Giordano, *Councilmember*

City Staff

Charles Lawson, *City Manager*
Greg Armendariz, *Public Works Director/City Engineer*
Emma C. Karlen, C.P.A., *Director of Financial Services*
Mary Lavelle, *City Clerk*

City Attorney

Myers, Nave, Riback, Silver and Wilson

Bond Counsel and Disclosure Counsel
Jones Hall, A Professional Law Corporation
San Francisco, California

Trustee
U.S. Bank National Association
San Francisco, California

Financial Advisor
E. Wagner & Associates, Inc.
Pleasanton, California

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Certificates referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not to be construed as a contract with the purchasers of the Certificates.

Estimates and Forecasts. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases “will likely result,” “are expected to”, “will continue”, “is anticipated”, “estimate”, “project,” “forecast”, “expect”, “intend” and similar expressions identify “forward looking statements.” Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, give rise to any implication that there has been no change in the affairs of the City since the date hereof.

Limit of Offering. No dealer, broker, salesperson or other person has been authorized by the City to give any information or to make any representations in connection with the offer or sale of the Certificates other than those contained herein and if given or made, such other information or representation must not be relied upon as having been authorized by the City or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Certificates by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Involvement of Underwriter. The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the Federal Securities Laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information. The information and expressions of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or the Sewer System since the date hereof. All summaries of the documents referred to in this Official Statement, are made subject to the provisions of such documents, respectively, and do not purport to be complete statements of any or all of such provisions.

THE CERTIFICATES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXCEPTION FROM THE REGISTRATION REQUIREMENTS CONTAINED IN SUCH ACT. THE CERTIFICATES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
THE PROJECT	5
ESTIMATED SOURCES AND USES OF FUNDS	6
THE CERTIFICATES	6
General	6
Prepayment of the Certificates	7
Book-Entry System	9
SECURITY FOR THE CERTIFICATES	11
General	11
Installment Payments	12
Application of Revenues	13
Rate Stabilization Fund	13
Limitations on Parity Debt and Superior Obligations	14
Rate Covenant	15
Reserve Fund	16
Installment Payments are Unconditional	16
Additional Covenants	17
Certificate Insurance	18
CERTIFICATE INSURANCE	19
SEWER SYSTEM	19
History	19
Service Area	19
Physical Assets and the Project	20
Management	20
San Jose/Santa Clara Water Pollution Control Plant	20
Regulatory Requirements	23
Historical Wastewater Flow	25
Customer Base	26
Capital Improvement Programs	27
REVENUES AND DEBT SERVICE COVERAGE	30
Sewer Rates and Revenues	30
Historical Sewer Service Charges	33
Rate Setting Process	36
Billing and Collection	36
Historical Revenues and Expenses	38
Outstanding Indebtness	39
Pro Forma Statement of Revenues and Expenses	39
RISK FACTORS	41
Sewer System Demand	41
Sewer System Expenses	41
Parity Debt	41
Natural Disasters	41
Proposition 218	43
Limited Recourse on Default	45
Limitations on Remedies Available; Bankruptcy	45
No Obligation to Tax	46
Change in Law	46
Loss of Tax Exemption	46
CONTINUING DISCLOSURE	47
CONCLUDING INFORMATION	47
Underwriting	47
Legal Opinions	47
Tax Matters	47
Litigation	48
Financial Advisor	49
Professional Fees	49
Ratings	49
Miscellaneous	50
APPENDIX A -- SUMMARY OF PRINCIPAL LEGAL DOCUMENTS	A-1
APPENDIX B -- CITY OF MILPITAS GENERAL DEMOGRAPHIC AND FINANCIAL INFORMATION	B-1
APPENDIX C -- CITY COMPREHENSIVE ANNUAL FINANCIAL REPORT	C-1
APPENDIX D -- PROPOSED FORM OF FINAL OPINION	D-1
APPENDIX E -- FORM OF CONTINUING DISCLOSURE CERTIFICATE	E-1
APPENDIX F -- BOOK ENTRY PROVISIONS	F-1
APPENDIX G -- SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY	G-1

OFFICIAL STATEMENT

\$ _____ *

CITY OF MILPITAS
Certificates of Participation, 2006 Series A
(City of Milpitas Sewer Financing)

The purpose of this Official Statement (which includes the cover page and the Appendices attached hereto) is to provide information concerning the execution and delivery of the City of Milpitas Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) (the “**Certificates**”), in the aggregate principal amount of \$ _____, evidencing and representing direct, undivided fractional interests of the registered owners thereof in certain Installment Payments (described herein) to be made by the City of Milpitas (the “**City**”) to the Milpitas Public Financing Authority (the “**Authority**”).

Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized. Definitions of certain terms used herein and not defined herein have the meaning set forth in the Trust Agreement.

INTRODUCTION

The Certificates. The Certificates are being executed and delivered pursuant to the provisions of a Trust Agreement, dated as of November 1, 2006 (the “**Trust Agreement**”), among the City, the Authority and U.S. Bank National Association, as trustee (the “**Trustee**”). The Certificates evidence and represent direct, undivided fractional interests of the registered owners thereof (the “**Owners**”) in certain Installment Payments (the “**Installment Payments**”) to be made by the City pursuant to an Installment Sale Agreement, dated as of November 1, 2006 (the “**Installment Sale Agreement**”), between the City and the Authority. The Certificates are subject to prepayment prior to their scheduled payment dates as described herein. See “THE CERTIFICATES.”

* Preliminary; subject to change.

Purpose. The City presently owns rights and property and operates facilities for the collection of sewage within the service area of the City (the “**Sewer System**”), and the City wishes to provide funds to finance certain improvements to the sewer system (the “**Project**”).

The proceeds of the sale of the Certificates will be used (i) to finance the Project, (ii) to fund a Reserve Fund for the Certificates, and (iii) to pay certain costs of execution and delivery of the Certificates. See “THE PROJECT,” “THE SEWER SYSTEM” and “ESTIMATED SOURCES AND USES OF FUNDS” herein.

Security for the Certificates. The Certificates evidence and represent direct, undivided fractional interests of the Owners in the Installment Payments to be made by the City pursuant to the Installment Sale Agreement. The payment of Installment Payments is secured by a pledge of the Net Revenues (as defined herein) of the Sewer System. See “SECURITY FOR THE CERTIFICATES” and “THE SEWER SYSTEM – Projected Operating Results and Debt Service Coverage” herein. The Installment Sale Agreement provides that the City may incur Parity Debt secured by a pledge of Net Revenue on a parity basis with the Installment Payments only upon the satisfaction of certain conditions as described therein (see “SECURITY FOR THE CERTIFICATES - Limitations on Parity Debt and Superior Obligations” herein).

Pursuant to the Installment Sale Agreement, the City has covenanted to fix, prescribe and collect certain rates and charges for service provided by the Sewer System. See “SECURITY FOR THE CERTIFICATES - Rate Covenant” herein.

Certificate Insurance. Concurrently with issuance of the Certificates, _____ (“_____”, or the “**Insurer**”) will issue its financial guaranty insurance policy (the “**Insurance Policy**”) for the Certificates. The Policy unconditionally guarantees the payment of that portion of the principal of and interest represented by the Certificates which has become due for payment, but which is unpaid. See “CERTIFICATE INSURANCE” and “APPENDIX G - SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY” herein for more information.

Prepayment. The Certificates are subject to optional and mandatory prepayment as described herein.

Assignment. Pursuant to the Trust Agreement, the Authority has transferred, conveyed and assigned to the Trustee, for the benefit of the Owners, substantially all of the Authority’s rights under the Installment Sale Agreement, including the right to receive Installment Payments from the City and the right to exercise any remedies provided therein in the event of a default by the City thereunder.

Risk Factors. There can be no assurance that the local demand for the services provided by the Sewer System will be maintained at levels described in this Official Statement, or that the City’s expenses for the Sewer System will be consistent with the levels described in this Official Statement. Changes in technology, decreased demand, new regulatory requirements, natural disasters, increases in the cost of energy or other expenses would reduce Net Revenues, and could require substantial increases in rates or charges in order to comply with the rate covenant.

Such rate increases could increase the likelihood of nonpayment, and could also further decrease demand.

If the City defaults on its obligation to make Installment Payments, the Trustee has the right to accelerate the total unpaid principal amount of the Certificates. However, in the event of a default and such acceleration there can be no assurance that the City will have sufficient Net Revenues to pay the accelerated payments.

See "RISK FACTORS" herein for a discussion of special factors which should be considered, in addition to the other matters set forth herein, in considering the investment quality of the Certificates, including a discussion of the impact of Proposition 218, Constitutional limits on fees and charges, seismic considerations, limitation on remedies and changes in law.

The City and the Authority. The City was incorporated in January 1954 and is located 45 miles south of San Francisco in the northern part of Santa Clara County. The City has grown into one of the world's premier computer and semiconductor producers. Located in the northeastern side of the "Silicon Valley," the City encompasses 13.6 square miles, with most of its land situated between two major freeways, I-680 and I-880. For other selected information concerning the City, see "APPENDIX B - CITY OF MILPITAS GENERAL ECONOMIC AND FINANCIAL INFORMATION" hereto.

The Milpitas Public Financing Authority is a joint exercise of powers authority created in 1997 by the City and the City's redevelopment agency. The authority was created to provide financial assistance to the City and the Agency.

Limited Obligations. THE CITY'S OBLIGATION TO MAKE INSTALLMENT PAYMENTS IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM NET REVENUES AND OTHER FUNDS PROVIDED FOR IN THE INSTALLMENT SALE AGREEMENT. NEITHER THE CERTIFICATES NOR THE OBLIGATION OF THE CITY TO MAKE INSTALLMENT PAYMENTS CONSTITUTES A DEBT OF THE CITY OR OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, OR AN OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Summaries Not Definitive. The summaries and references of documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each document, statute, report, or instrument. The capitalization of any word not conventionally capitalized, or otherwise defined herein, indicates that such word is defined in a particular agreement or other document and, as used herein, has the meaning given it in such agreement or document. See APPENDIX A hereto for the definitions of certain terms used herein and for a summary of certain provisions of the Trust Agreement and the Installment Sale Agreement.

Copies of the documents described herein will be available at the office of the Director of Financial Services, 455 East Calaveras Boulevard, Milpitas, California 95035.

THE PROJECT

The Project consists of the following capital improvements to the Sewer System:

- (i) New Pump Station: replacement of the Sewer System's existing sewage pump station located at Dixon Landing Road and North McCarthy Blvd. The new pump station's capacity will be 20 million gallons per day (wet weather flow).
- (ii) Operations Building: Construction of a 2,500-square foot operations building.
- (iii) Other Improvements: Any other improvements to the Sewer System approved by the City Council.

All demolition, relocation and construction will be phased to allow the existing influent sewer and pump station to operate until the new pump station is operational. The City expects to commence construction in January 2007 and to complete construction in October 2009.

ESTIMATED SOURCES AND USES OF FUNDS

The proceeds to be received from the sale of the Certificates are anticipated to be applied as follows:

SOURCES:

Principal Amount of Certificates
Less: Net Original Issue Discount
Less: Underwriter's Discount
TOTAL SOURCES

USES:

Project Fund
Costs of Issuance Fund ⁽¹⁾
Reserve Fund
TOTAL USES

⁽¹⁾ Includes fees of Special Counsel, Disclosure Counsel, Financial Advisor and Trustee, premium for the Insurance Policy and other costs of executing and delivering the Certificates.

THE CERTIFICATES

General

The Certificates will be delivered in the form of fully registered Certificates, without coupons, in denominations of \$5,000 or any integral multiple thereof, and shall be dated the date of delivery to the initial purchaser thereof. The Certificates, when executed and delivered, will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"). So long as DTC, or Cede & Co. as its nominee, is the registered owner of all Certificates, all payments with respect to the Certificates will be made directly to DTC, and disbursement of such payments to the DTC Participants (defined below) will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners (defined below) will be the responsibility of the DTC Participants, as more fully described hereinafter. See "Book-Entry System" below.

Interest evidenced by the Certificates shall be payable on May 1 and November 1 of each year, commencing May 1, 2007 (each, an "Interest Payment Date"), and continuing to and including the date of maturity or prior prepayment, whichever is earlier. Principal evidenced by the Certificates shall be payable on November 1 in each of the years and in the amounts set forth on the inside cover page of this Official Statement. Principal and premium, if any, evidenced by the Certificates shall be payable to the Owner upon presentation and surrender of such Certificate at the corporate trust office of the Trustee in San Francisco, California. Interest evidenced by the Certificates shall be calculated on the basis of a 360-day year consisting of twelve 30-day months and payment of interest due with respect to any Certificate on any Interest Payment Date shall be made to the person appearing on the Registration Books as the Owner thereof as of the

15th calendar day of the month immediately preceding such Interest Payment Date (each, a “**Record Date**”), such interest to be paid by check mailed on the Interest Payment Date by first class mail to such Owner at his address as it appears on the Registration Books as of such Record Date. At the written request of the Owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of the Record Date preceding any Interest Payment Date, the Trustee will pay interest represented by the Certificates by wire transfer in immediately available funds to such account in the United States as is specified in the written request.

Prepayment of the Certificates

Optional Prepayment. The Certificates maturing on or before November 1, 2016, are not subject to optional prepayment prior to the respective stated maturities. The Certificates maturing on or after November 1, 2017, are subject to optional prepayment in whole on any date on or after November 1, 2016, or in part, from prepayments of the Installment Payments made at the option of the City pursuant to the Installment Sale Agreement. Certificates are subject to prepayment at a prepayment price (expressed as percentages of the principal amount of Certificates or portions thereof to be prepaid) as set forth in the following table, in each case with accrued interest represented thereby to the prepayment date:

<u>Prepayment Dates</u>	<u>Prepayment Price</u>
November 1, 2016 through October 31, 2017	101%
November 1, 2017 and thereafter	100

If the City prepay the Certificates in part but not in whole, the Trustee will select the Certificates for prepayment among maturities on such basis as the City designates in written notice to the Trustee, and by lot within a maturity.

Mandatory Sinking Account Prepayment. Certificates maturing on November 1, 20__ (the “20__ Term Certificates”) are subject to mandatory sinking fund prepayment on November 1 in each of the years as set forth in the following table, from the principal components of the Installment Payments required to be paid by the City under the Installment Sale Agreement with respect to each such prepayment date, at a prepayment price equal to the principal amount thereof to be prepaid, without premium, together with accrued interest represented thereby to the date fixed for prepayment, as follows:

20__ Term Certificates

<u>Prepayment Date (November 1)</u>	<u>Principal Amount of Term Certificates to be Prepaid</u>
(maturity)	

Certificates maturing on November 1, 20__ (the “20__ Term Certificates”) are subject to mandatory sinking fund prepayment on November 1 in each of the years as set forth in the following table, from the principal components of the Installment Payments required to be paid by the City under the Installment Sale Agreement with respect to each such prepayment date, at a prepayment price equal to the principal amount thereof to be prepaid, without premium, together with accrued interest represented thereby to the date fixed for prepayment, as follows:

20__ Term Certificates

Prepayment Date <u>(November 1)</u>	Principal Amount of Term <u>Certificates to be Prepaid</u>
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(maturity)

Notwithstanding the foregoing, if some but not all of the 20__ Term Certificates or 20__ Term Certificates (collectively, the “**Term Certificates**”) have been prepaid under the optional prepayment provisions described above, the aggregate principal amount of such Term Certificates to be prepaid in each year thereafter shall be reduced by the aggregate principal amount of such Term Certificates so prepaid, to be allocated among maturities in integral multiples of \$5,000 such that the resulting amount of principal represented by such Term Certificates subject to prepayment on any date is not less than the aggregate principal components of the Installment Payments coming due and payable on such date, as provided in a certificate of the City filed with the Trustee.

Selection of Certificates for Prepayment. Whenever provision is made for the prepayment of Certificates and less than all Outstanding Certificates of any one maturity are called for prepayment, the Trustee will select Certificates for prepayment within such maturity by lot in any manner deemed fair by the Trustee. For the purposes of such selection, Certificates will be deemed to be composed of \$5,000 portions, and any such portion may be separately prepaid.

Notice of Prepayment; Rescission. When prepayment is authorized or required, at least 30 days but not more than 60 days prior to the prepayment date, the Trustee shall give notice of the prepayment of the Certificates on behalf and at the expense of the City. Such notice shall state the prepayment date and prepayment price and, if less than all of the then Outstanding Certificates of any maturity are to be called for prepayment, shall designate the numbers of the Certificates to be prepaid by giving the individual number (including the CUSIP number) of each Certificate or by stating that all Certificates between two stated numbers, both inclusive, have been called for prepayment or by stating that all of the Certificates of one or more maturities have been called for prepayment, and shall require that such Certificates be surrendered on the designated prepayment date at the Trust Office of the Trustee for prepayment at said prepayment price. Such notice shall also provide that further interest represented by the Certificates will not accrue from and after the prepayment date.

The City has the right to rescind any optional prepayment by written notice to the Trustee on or prior to the date fixed for prepayment. Any such notice of optional prepayment shall be canceled and annulled if for any reason funds will not be or are not available on the date fixed for prepayment for the payment in full of the Certificates then called for prepayment, and such cancellation shall not constitute an Event of Default under the Trust Agreement. The City and the Trustee have no liability to the Owners or any other party related to or arising from such rescission of prepayment. The Trustee shall mail notice of such rescission of prepayment in the same manner as the original notice of prepayment was sent.

Effect of Notice of Prepayment. Moneys for the prepayment (including the interest to the applicable date of prepayment) of Certificates having been set aside in the Installment Payment Fund, the Certificates shall become due and payable on the date of such prepayment, and, upon presentation and surrender thereof at the Trust Office of the Trustee, said Certificates will be paid at the unpaid principal amount (or applicable portion thereof) represented thereby plus any applicable premium and plus interest accrued and unpaid to said date of prepayment. If, on said date of prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest represented thereby to said date of prepayment, shall be held by the Trustee so as to be available therefor on such date of prepayment, then, from and after said date of prepayment, interest represented by the Certificates shall cease to accrue and become payable.

Book-Entry System

DTC will act as securities depository for the Certificates. The Certificates will be issued as fully-registered Certificates registered in the name of Cede & Co., (DTC's partnership nominee). One fully-registered Certificate will be issued for each maturity of the Certificates, each in the aggregate principal amount of such maturity, and will be deposited with DTC. See "APPENDIX F- BOOK ENTRY PROVISIONS" herein.

The City and the Trustee cannot and do not give any assurances that DTC, DTC Participants or others will distribute payments of principal, interest or premium with respect to the Certificates paid to DTC or its nominee as the registered owner, or will distribute any prepayment notices or other notices, to the Beneficial Owners, or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The City and the Trustee are not responsible or liable for the failure of DTC or any DTC Participant to make any payment or give any notice to a Beneficial Owner with respect to the Certificates or an error or delay relating thereto.

SCHEDULE OF INSTALLMENT PAYMENTS

The table below shows the annual payments of principal and interest with respect to the Certificates.

Period Ending <u>(November 1)</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
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TOTAL

SECURITY FOR THE CERTIFICATES

General

THE CITY'S OBLIGATION TO MAKE INSTALLMENT PAYMENTS IS A SPECIAL OBLIGATION OF THE CITY PAYABLE SOLELY FROM NET REVENUES AND OTHER FUNDS PROVIDED FOR IN THE INSTALLMENT SALE AGREEMENT. NEITHER THE CERTIFICATES NOR THE OBLIGATION OF THE CITY TO MAKE INSTALLMENT PAYMENTS CONSTITUTES A DEBT OF THE CITY OR OF THE STATE OF CALIFORNIA OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION OR ANY OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Each Certificate evidences and represents a direct, undivided fractional interest of the Owner thereof in the Installment Payments to be made by the City under the Installment Sale Agreement. The Authority, pursuant to the Trust Agreement, has transferred, conveyed and assigned to the Trustee, for the benefit of the Owners, substantially all of the Authority's rights under the Installment Sale Agreement, including the right to receive Installment Payments from the City and the right to exercise any remedies provided therein in the event of a default by the City thereunder.

All Net Revenues (defined below) are pledged to the payment of the Installment Payments and debt service on other Parity Debt as provided in the Installment Sale Agreement, and the Net Revenues shall not be used for any other purpose while any of the Installment Payments remain unpaid; provided, however, that out of the Net Revenues there may be apportioned such sums for such purposes as are expressly permitted by the Installment Sale Agreement, including payment of debt service on any Parity Debt. This pledge constitutes a first lien on the Net Revenues for the payment of the Installment Payments and debt service on any Parity Debt in accordance with the Installment Sale Agreement. The Installment Sale Agreement provides that the City may incur additional Parity Debt upon the satisfaction of certain conditions as described therein (see "Limitations on Parity Debt and Superior Obligations" below).

The "**Sewer System**" means the entire system of the City for the collection of sewage within the service area of the City, including but not limited to all facilities, properties, lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City. **The physical assets of the Sewer System are not security for the Installment Payments or the Certificates.**

"**Net Revenues**" means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

“Gross Revenues” means all gross charges (excluding surcharges, if any) received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Sewer System or otherwise arising from the Sewer System, including but not limited to (a) any amounts transferred to the Sewer Fund from a Rate Stabilization Fund in accordance with the Installment Sale Agreement and (b) investment earnings on amounts held in the Sewer Fund or in any other fund established with respect to the Sewer System. Gross Revenues do not include (i) refundable deposits made to establish credit, (ii) the proceeds of any ad valorem property taxes, (iii) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Sewer System and (iv) connection charges.

“Operation and Maintenance Costs” of the Sewer System means the reasonable and necessary costs and expenses paid by the City to maintain and operate the Sewer System, including but not limited to (a) costs of electricity and other forms of energy supplied to the Sewer System, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Sewer System in good repair and working order, (c) payments under any contracts, notes or leases executed in connection with the City's acquisition of the Sewer System or any part thereof and (d) payments due on any State Loan that is either not Parity Debt or the payments or any part thereof which are not subordinated to the payment of the Installment Payments.

Operation and Maintenance Costs does not include (i) debt service payable on obligations incurred by the City with respect to the Sewer System (except as described in (d) above), including but not limited to the Installment Payments and any Parity Debt, (ii) capital costs in excess of those, if any, required in clause (b) of the previous paragraph, (iii) depreciation, replacement and obsolescence charges or reserves therefor, (iv) amortization of intangibles or other bookkeeping entries of a similar nature and (v) any overhead costs of the City to be repaid through annual transfers to the City's General Fund.

In the Installment Sale Agreement, the City covenants that it will not make any pledge of or place any lien on Net Revenues senior to the pledge and lien for the payment of the Installment Payments and will not make any pledge of or place any lien on the Net Revenues on a parity with the pledge and lien for Installment Payments, or subordinate thereto, except as otherwise provided in the Installment Sale Agreement. The City has the right to issue or incur indebtedness or other obligations on a parity with the Installment Payments (see “Limitations on Parity Debt and Superior Obligations” below).

Installment Payments

The Installment Sale Agreement requires the City to make semi-annual payments of Installment Payments three Business Days preceding such Interest Payment (each, an **“Installment Payment Date”**), and continuing thereafter during the term of the Certificates, in amounts as specified in the Installment Sale Agreement (see “Application of Revenues” below, and APPENDIX A hereto). As a result of the assignment by the Authority to the Trustee, the City will pay the Installment Payments directly to the Trustee.

Application of Revenues

The City has previously established the Sewer Fund, which the City shall continue to hold and maintain for the purposes and uses set forth in the Installment Sale Agreement. The City shall deposit all Gross Revenues in the Sewer Fund immediately on receipt. The City shall apply amounts in the Sewer Fund as set forth in the Installment Sale Agreement and any agreements relating to the issuance of Parity Debt. The City shall apply amounts on deposit in the Sewer Fund to pay when due the following amounts in the following order of priority:

- all Operation and Maintenance Costs;
- the Installment Payments and all payments of principal of and interest on any Parity Debt;
- to the Trustee the amount of any deficiency in the Reserve Fund established for the Certificates and in any reserve fund established for any Parity Debt, the notice of which deficiency has been to the City in accordance with the Trust Agreement and the related Parity Debt Documents, respectively;
- any other payments required to comply with the provisions of this Agreement and any Parity Debt Documents; and
- so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the Sewer Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Sewer System, (iii) the prepayment of any other obligations of the City relating to the Sewer System, or (iv) any other lawful purposes of the City, including deposit to the Rate Stabilization Fund, if one has been established by the City.

Rate Stabilization Fund

The City has the right at any time to establish a Rate Stabilization Fund to be held by it for the purpose of stabilizing the rates and charges imposed by the City with respect to the Sewer System. From time to time the City may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments, as the City may determine. The City may, but is not required to, withdraw amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Sewer Fund in any Fiscal Year for the purpose of paying the Installment Payments or the principal of and interest on any Parity Debt coming due and payable in such Fiscal Year. *Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments or any Parity Debt.* All interest or other earnings on amounts in the Rate Stabilization Fund shall be retained therein or, at the option of the City, be applied for any other lawful purposes. The City has the right at any time to

withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

Limitations on Parity Debt and Superior Obligations

Obligations Superior to Installment Payments. The City is prohibited by the Installment Sale Agreement from issuing or incurring, so long as any Certificates are outstanding, any additional bonds or other obligations having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. The City may issue or incur (a) Parity Debt, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues (see “RISK FACTORS – Parity Debt” herein).

Obligations on a Parity with the Installment Payments. The City has covenanted in the Installment Sale Agreement that, except for obligations issued or incurred to prepay the Installment Payments, the City will not issue or incur any Parity Debt unless:

- (a) No Event of Default has occurred and is continuing;
- (b) The Net Revenues, calculated in accordance with sound accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12 month period selected by the City, in either case verified by an Independent Accountant or a Fiscal Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, at least equal 115% of Maximum Annual Debt Service (taking into account the Parity Debt then proposed to be issued); and
- (c) There is established from the proceeds of such Parity Debt a reserve fund for the security of such Parity Debt, in an amount equal to the lesser of (i) the amount required to cause the balance in the Reserve Fund, and in all reserve funds established for any Parity Debt, to be equal to the maximum amount of Installment Payments and any Parity Debt coming due in the current or any future Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code, except that the provisions of this provision do not apply to any Parity Debt which constitutes a loan from the State of California or any of its agencies; and
- (d) The trustee or fiscal agent for such Parity Debt is the same entity performing the functions of Trustee under the Trust Agreement.

“Additional Revenues” means, with respect to the issuance of any Parity Debt, any or all of the following amounts:

- (i) An allowance for Net Revenues from any additions or improvements to or extensions of the Sewer System to be made by the City during the 36 month period following the issuance of such Parity Debt, in an amount equal to 100% of the estimated

additional average annual Net Revenues to be derived from all properties which are improved with a structure the construction of which has been completed prior to the date of issuance of such Parity Debt and to which service will be provided by such additions, improvements and extensions, all as shown by the certificate or opinion of a Fiscal Consultant.

(ii) An allowance for Net Revenues arising from any increase in the charges made for service from the Sewer System which has become effective prior to the incurring of such Parity Debt but which, during all or any part of the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12 month period selected by the City under the Installment Sale Agreement, was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or 12 month period, all as shown by the certificate or opinion of a Fiscal Consultant.

Obligations Subordinate to Installment Payments. Nothing in the Installment Sale Agreement limits or affects the ability of the City to issue or incur obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established thereunder.

Rate Covenant

The City has covenanted in the Installment Sale Agreement to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Sewer System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority

- (a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;
- (b) All Installment Payments and all payments of principal of and interest on any Parity Debt as they become due and payable during such Fiscal Year, without preference or priority;
- (c) All amounts, if any, required to restore the balance in the Reserve Fund and in the reserve funds established for any Parity Debt to the full amount of the Reserve Requirement; and
- (d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City has covenanted to fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Sewer System during each Fiscal Year which are

sufficient to yield Net Revenues (including any amounts transferred from a Rate Stabilization Fund) which are at least equal to 115% of the amount described in clause (b) of the preceding paragraph.

Reserve Fund

The City has agreed to establish and maintain so long as any Certificates are outstanding a separate fund, to be held by the Trustee for and on behalf of the City, to be known as the Reserve Fund. The City is initially funding the Reserve Fund from proceeds of the Certificates, as described in "ESTIMATED SOURCES AND USES OF FUNDS" above. All amounts in the Reserve Fund shall be used and withdrawn by the Trustee solely for the purpose of paying interest or principal represented by the Certificates when due and payable to the extent that moneys deposited in the Installment Payment Fund are not sufficient for such purpose, and making the final payments of principal and interest represented by the Certificates. After the initial deposit has been made, the City shall maintain or cause to be maintained in the Reserve Fund, and in the reserve funds established for all Parity Debt, an aggregate amount equal to the Reserve Requirement. In the event of a deficiency in the Reserve Fund, the City shall pay to the Trustee, from Net Revenues, an amount necessary to bring the amounts on deposit in the Reserve Fund, and in the reserve funds established for all Parity Debt, to the Reserve Requirement.

If, on any Interest Payment Date, the moneys on hand in the Installment Payment Fund do not equal the amount of the interest payment or principal payment then due and payable with respect to the Certificates, the Trustee shall apply the moneys on hand in the Reserve Fund to make such payment on behalf of the City by transferring the amount necessary to the Installment Payment Fund. Upon receipt by the Trustee from the City of any delinquent Installment Payment with respect to which moneys have been advanced from the Reserve Fund, such Installment Payment shall be deposited in the Reserve Fund to the extent of such advance.

If the amount of any income realized from the investment of the money in the Reserve Fund plus the remaining principal amount thereof exceeds the Reserve Requirement, such excess shall be transferred to the Installment Payment Fund.

The City may satisfy the requirement to deposit a specified amount in the Reserve Fund by the deposit of a surety bond, insurance policy or letter of credit meeting the requirements set forth in the Trust Agreement (a "**Qualified Reserve Fund Credit Instrument**"). See APPENDIX A hereto.

Installment Payments are Unconditional

The obligation of the City to make the Installment Payments and to perform and observe the other agreements contained in the Installment Sale Agreement are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim, or recoupment arising out of any breach of the City or the Trustee of any obligation to the City, or out of indebtedness or liability at any time owing to the City by the City or the Trustee.

Until such time as all of the Installment Payments have been fully paid, prepaid or secured, the City:

- (a) will not suspend, discontinue or fail to make any Installment Payments, whether or not the Sewer System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part
- (b) will perform and observe all other agreements contained in the Installment Sale Agreement; and
- (c) will not terminate the Installment Sale Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any act or circumstance that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Sewer System, the taking by eminent domain of title to or temporary use of any or all of the Sewer System, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of California or any political subdivision of either, or any failure of the City or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Trust Agreement or the Installment Sale Agreement.

Nothing in the Installment Sale Agreement will be construed to release the City or the Trustee from the performance of any of the agreements on its part contained in the Installment Sale Agreement or in the Trust Agreement, and if the City or the Trustee fails to perform any such agreements on its part, the other party may institute such action to compel performance so long as such action does not abrogate the obligations of the City to pay the Installment Payments.

Additional Covenants

Additional covenants of the City contained in the Installment Sale Agreement include, but are not limited to, the following (see "APPENDIX A – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS - Installment Sale Agreement" hereto):

- (a) **Insurance.** The City shall at all times maintain with responsible insurers all such insurance on the Sewer System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Sewer System. All amounts collected from insurance against accident to or destruction of any portion of the Sewer System shall be used, at the option of the City, either (a) to repair or rebuild such damaged or destroyed portion of the Sewer System, or (b) to prepay on a pro rata basis (i) the Installment Payments on the next available prepayment date, and (ii) any Parity Debt in accordance with the related Parity Debt Documents.

The City is required to maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the interests of the City, the Authority, the Trustee and

the Owners of the Certificates. Any such policy of insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

(b) **Operation of the Sewer System.** The City shall operate the Sewer System in an efficient and economical manner and to operate, maintain and preserve the Sewer System in good repair and working order.

(c) **Sale or Eminent Domain of Sewer System.** Except as provided in the Installment Sale Agreement, the City covenants that the Sewer System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of the Installment Sale Agreement or any Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Sewer System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Certificate Owners or the Trustee with respect to the Net Revenues. If any substantial part of the Sewer System is sold, the payment therefore shall either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to (i) prepay the Installment Payments on the next available prepayment date, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

Any amounts received as awards as a result of the taking of all or any part of the Sewer System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition or construction of improvements and extension of the Sewer System, or (b) be applied on a pro rata basis to (i) prepay the Installment Payments on the next available prepayment date, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

Certificate Insurance

Simultaneously with the delivery of the Certificates, the Insurance Policy will be issued by the Insurer which provides for payment of the principal and interest with respect to the Certificates when due to the extent that the Trustee has not received payment therefor. See "CERTIFICATE INSURANCE" and "APPENDIX G - SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY" herein for more information.

CERTIFICATE INSURANCE

[to come]

THE SEWER SYSTEM

History

When the City was incorporated in 1954, the Milpitas Sanitary District was formed, with original facilities consisting of a collection system and sewer treatment plant. In 1964, several new facilities were installed, including a trunk sewer upstream of the plant, lift station, settling basins, activated sludge basins, chlorine contact basins, digester, and a blower building. Most of these facilities have since been removed.

In the 1960's, a small lift station serving the Pines subdivision was constructed. The system's main pumping station (the "**Main Pump**"), initially constructed in 1965, originally served as the pumping station into the Milpitas Wastewater Treatment Plant. The Milpitas Wastewater Treatment Plant was abandoned in 1972, and the Main Pump was converted into a pumping station that pumps all wastewater generated in the City to the San Jose/Santa Clara Water Pollution Control Plant (the "**WPCP**") via a forcemain for treatment. In 1980, the Milpitas Sanitary District was dissolved and the City took over operations. A second forcemain to the WPCP was constructed in 2002.

Service Area

The City can be divided into two distinct areas: (i) roughly 10.1 square miles on the relatively flat "**Valley Floor**" to the west and (ii) 3.5 square miles on the steep "**Hillside**" to the east. The Valley Floor areas are zoned for industrial, commercial, and residential uses. The Hillside areas are zoned for residential use only. Park and recreational open spaces are distributed throughout the residential areas.

The City's urban service area is defined based on the General Plan and General Plan amendments, most importantly Resolution No. 6796 of the City Council. This 1998 resolution established a new urban service area boundary by prohibiting City services (including sewer service) in areas outside of the urban growth boundary and outside of the City limits. This resolution is applicable until December 2018 (it could be amended under specific circumstances through a General Plan amendment).

The Sewer System's service area includes areas inside the City limits and the easterly hillside area outside the City limits. The Sewer System collects wastewater flows from approximately 6,000 acres within the City planning area, serving a population of approximately 63,800 through 860,640 linear feet ("**LF**") of sewers.

Physical Assets and the Project

The City's wastewater flows are conveyed mostly by gravity to the Main Pump, which pumps the wastewater flow to the WPCP through two force mains. A second pump station, located on Venus Way (the "**Venus Pump**"), connects a low-elevation portion of the City to the gravity sewer system. The Sewer System includes a number of siphons under the San Francisco Public Utility Commission water supply pipeline, creeks and highways.

Physical assets of the Wastewater System include:

- 172 miles of sewer mains
- 10 air-vac valves
- 2,022 flushing inlets
- 2,604 manhole covers
- 2 pump stations (the Main Pump and the Venus Pump)

In 2005, the City retained Kennedy/Jenks Consultants to conduct an evaluation of the Main Pump, develop a hydraulic model of the pump station, and recommend improvements to the Main Pump. The report recommended that the Main Pump be abandoned and a new pumping facility be constructed.

Management

The City manages the Sewer System but uses the San Jose Water Company for billing services.

Brief biographies of key members of City staff involved in management of the Sewer System are set forth below:

Public Works Director - Greg Armendariz was appointed as the City's Public Works Director in January, 2006. Prior to joining the City in 1994, he worked for various public agencies. He has over 20 years of experience in civil engineering. He holds a bachelors degree in civil engineering and is a licensed Professional Civil Engineer.

Finance Director - Emma Karlen was appointed as the City's Finance Director in 2001. She joined the City as the Assistant Finance Director in 1998. She has over 16 years of experience in governmental finance. She received a BS degree in Marketing from Fresno State University and an MBA degree in Finance from University of British Columbia. She is a Certified Public Accountant in the state of California.

SanJose/Santa Clara Water Pollution Control Plant

The WPCP. Currently, all wastewater collected from the City is pumped via the Main Pump to the WPCP. The WPCP has a wastewater treatment capacity of 167 MGD, and receives and treats wastewater from a total of eight cities and districts. The WPCP is jointly owned by the cities of San José and Santa Clara and is administered and operated by the City of San José's Environmental Services Department ("**ESD**"), which is also responsible for planning, designing

and constructing new wastewater treatment and water reuse facilities. The WPCP is one of the largest advanced wastewater treatment facilities in the State and serves over 1.5 million people in a 300 square mile area located around the southern part of the San Francisco Bay.

Capital costs are estimated annually by ESD staff and are reviewed and recommended as a budget by the Treatment Plant Advisory Committee to the San José City Council for appropriation. The costs are allocated to each member agency (“**Member Agency**”) based on its contracted-for capacity in the Plant. Each Member Agency is responsible for its allocated share of WPCP costs, as well as its own sewage collection system maintenance, operation, and capital costs; debt service on its bonds issued for sewer purposes; and any other sewer service related costs. Each Member Agency is also responsible for establishing and collecting its respective sewer service and use charges, connection fees or other charges for sewer service.

A revenue program is prepared annually by each Member Agency to establish its sewer service and use charge rates. Rates are adopted by ordinance or resolution of the governing body of each Member Agency. The Member Agencies’ revenue programs, ordinances and resolutions are submitted to the City of San José, as the administering agency, for review to determine conformance with State Water Resources Control Board (“**SWRCB**”) revenue program guidelines, and are then submitted to the SWRCB for review and certification.

The WPCP’s treatment capacity is allocated to each discharger on the basis of the peak five-day dry weather flow, also referred to as the peak week flow. Due to the way the peak week is determined (WPCP looks at influent data to determine the five-day period of interest during the months of June through October and requests each discharger to provide their average contribution for that identified peak week), it may or may not match with the City’s highest dry weather flows. The City’s current entitlement for flow and wastewater strength parameters is set forth below:

<u>Flow (MGD)</u>	<u>BOD (k lbs/day)</u>	<u>SS (k lbs/day)</u>	<u>NH3 (k lbs/day)</u>
13.5	27.249	24.433	2.628

The WPCP Agreement. The Master Agreement for Wastewater Treatment Between City of San José, City of Santa Clara and City of Milpitas, dated as of March 1, 1983 (the “**Master Agreement**”), is the agreement that gives the City rights to a percentage of the capacity of the sewage treatment facilities. The Master Agreement terminates on January 1, 2031 and requires the City to pay its share of debt service related to the WPCP. The City also pays costs based on (i) allocated flow capacity rights of 13.5 MGD or approximately 8.2% of the total WPCP capacity and (ii) a share of operation and maintenance costs based upon actual sewage flow and strengths. In fiscal year 2004-05, the City’s share of operation and maintenance costs was approximately 6% of the total cost, and it was 6.4% in fiscal year 2005-06.

The Master Agreement provides that if, for any reason, the Master Agreement is not renewed in the year 2031, the City shall have the right to continue discharging to the WPCP, provided all payments of the City’s share of WPCP costs are made, and all other rights of the City under the Master Agreement will cease.

The Master Agreement:

- grants the City a right to discharge wastewater into the WPCP;
- obligates the City to adopt and enforce ordinances, resolutions, rules and regulations to conform to the industrial waste ordinance of the City of San José concerning the type and condition of discharge that would be detrimental to the WPCP;
- restricts the City's discharge to wastewater produced within the City's service area, as mapped in the Master Agreement;
- sets up a mechanism for the City to acquire or dispose of "excess pooled capacity" and to acquire additional capacity rights if the WPCP expands;
- establishes the City's participation and rights in the WPCP;
- creates a nine-member advisory committee, with a Milpitas City Councilmember as one member, to aid in the operations and administration of the WPCP;
- specifies that the City may sell, grant, assign or otherwise transfer the Master Agreement to any corporation, district or governmental organization; and
- obligates the City to make payments associated with future improvements at the WPCP.

The Master Agreement has been amended three times. The First Amendment, entered into on December 4, 1985 (i) reallocated the treatment capacities of each Agency, (ii) reallocated the distribution of rights to the WPCP and (iii) established ratios for each Member Agency's participation in the Intermediate-Term (restoration of the WPCP capacity to 143 MGD, which have been completed; the City has paid all amounts due for its capacity in this project) and First Stage Expansion Projects (expansion of the WPCP capacity from 143 to 167 MGD, which have been completed; the City has paid all amounts due for its capacity in this project).

The Second Amendment, entered into on November 21, 1995, further reallocated costs among the Member Agencies in connection with the Intermediate-Term and First Stage Expansion Projects and water recycling program of the WPCP (two-phase program to reclaim a portion of the WPCP's effluent as an alternative to discharging to the San Francisco South Bay, which was incorporated into the WPCP's NPDES permit in October 1993, phase 1 of which is underway).

In early 2006, the City entered into an agreement with the West Valley Sanitation District (the "WVSD") to purchase excess wastewater treatment capacity (1 million gallons per day) from the WVSD. In connection with this agreement, a Third Amendment dated July 1, 2006 was executed, which established the new capacity right allocation and capital cost share for the City as a result of the transfer.

Additional Capacity. The City is preparing a Milpitas Transit Area Specific Plan, which is projected to include 7,185 residential units. The City expects that development consistent with

the Transit Area Specific Plan will create demand for approximately 1.0 MGD of additional capacity at the WPCP.

In 2005, the City filed suit against the City of San José claiming the North San Jose Environmental Impact Report, which addresses the environmental impacts of projected development of the area adjacent to the territory encompassed in the Transit Area Specific Plan, was inadequate. The City and the City of San José have executed a settlement agreement with respect to the litigation, but the settlement agreement is contingent on execution of settlement agreements with the City of San José by the County of Santa Clara and the City of Santa Clara. The settlement agreement between the City and the City of San José commits both parties to negotiate in good faith with respect to a lease of additional capacity in the WPCP by the City of San José to the City of Milpitas. In the event the City is able to purchase or lease additional wastewater capacity at the WPCP, the City expects to fund the cost of the capacity with developer fees (which are not an element of Gross Revenues, as defined in the Trust Agreement) and temporary interfund borrowing. Consequently, the cost of the additional capacity would not impact the availability of Net Revenues for payment of the Installment Payment.

Regulatory Requirements

WPCP- Related Requirements. Because the City discharges wastewater to the WPCP for treatment and disposal, the City's wastewater operations are subject to many of the same regulatory requirements as the Cities of Santa Clara and San José. These requirements are contained in the Federal Water Pollution Control Act, as amended, (the “**Clean Water Act**”), and in the State of California Porter Cologne Water Quality Control Act of 1969, as amended. Both federal and State regulations are administered through the San Francisco Regional Water Quality Control Board (Regional Water Board), and generally deal with the quality of effluent discharged from the WPCP, the disposal of biosolids from the WPCP, the discharge of pollutants into the groundwater and the nature of waste material (particularly industrial waste) discharged into the collection system.

Wastewater discharge criteria are currently established with respect to the WPCP under a five-year waste NPDES permit that expires on September 30, 2008. These limits are included in the Milpitas Sanitary Code and are listed in the industrial wastewater permits issued to industries within the Sewer System's Service Area. There have been no violations of effluent limitation in the past three years. The NPDES permit includes a pretreatment program element, pursuant to which the City of San José must implement and enforce an approved pretreatment program. The pretreatment program was audited by the United States Environmental Protection Agency (the “**EPA**”) in 2004, and the EPA issued an administrative order (“**A.O.**”) on March 17, 2005, identifying programmatic deficiencies. In response, the City of San José submitted a multi-year plan that was accepted by the EPA and is actively working to address the EPA's concerns. All reporting requirements of the A.O have been met.

The NPDES Permit also includes a pollution prevention program element, pursuant to which the City of San José is required to continue conducting and improving the existing Pollution Prevention Program. In 2006, the San Francisco Bay Area Regional Water Quality Control

Board (the “**RWQCB**”) found the Annual Pollution Prevention Report to be unacceptable and required the submittal of a revised Pollution Prevention Report. A notice of violation was issued in 2005 due to a late submittal of the revised report. In a letter dated August 3, 2006, the RWQCB deemed the Pollution Prevention Program in compliance after reviewing the revised report.

The WPCP discharges into the lower Southern portion of the San Francisco Bay (the “**South Bay**”), which is a unique hydrogeologic environment where site-specific water quality objectives and protection of endangered species habitat are considered essential. Metals along with organics and pesticides, often referred to as emerging pollutants, have been of concern to the health of the entire San Francisco Bay. Examples of both current and future pollutants of concern include copper, nickel, mercury, and cyanide. The five organics and pesticides limits currently in the WPCP’s NPDES Permit are there due to background levels in the South Bay, but they are not detected in the WPCP’s effluent. The WPCP’s advanced treatment capabilities along with the pollution prevention and pretreatment programs described above make the WPCP’s effluent amongst the highest quality in the the Bay Area and the nation. Pollution prevention and the pretreatment program will be the mechanisms to maintain or reduce influent pollutant levels. The City does not believe that future WPCP NPDES permit is likely to include more stringent wastewater treatment requirements.

Most of the treated effluent from the WPCP is discharged as fresh water into the South Bay. This effluent has a lower salinity content than the brackish water of the South Bay and can adversely affect the ecological balance of the area. Because of this ecological risk, the Regional Water Quality Control Board set a target limit on the amount of effluent that the WPCP can discharge into the Bay between May and October, the dry-weather months. The target limit is currently set as 120 mgd of average dry weather effluent or to levels that protect endangered species habitat. The average dry weather flow in fiscal year 2005-06 was 100 MGD.

The WPCP’s Title V Air Permit, No. A0778, issued by the Bay Area Air Quality Management District expires on October 5, 2006, and reissuance is currently in progress. There have been five violations of the air permit in the last 3 years. The various causes of the violations have been addressed. Of greatest concern was an odor violation from the residual solids management area. Changes in operation over the past several years appear to have helped alleviate the cause of the odors, and ongoing monitoring and adaptive management is being employed to prevent future odor issues.

The South Bay Water Recycling Project was established as a means of diverting effluent for non-potable uses such as landscaping, agricultural irrigation, and some industrial uses. Approximately 10% of the WPCP’s effluent is recycled through the South Bay Water Recycling Project. The South Bay Action Plan includes a number of projects to help reduce WPCP effluent. The projects include expansion of the recycled water system, industrial water recycling and reuse, inflow infiltration reduction, and residential/commercial water conservation. The City of San José has issued a document titled Clean Bay Strategy Report, which identifies several methods for reducing flow volumes and pollutants to the Bay. These reports can be found on the City of San Jose’s website <http://www.sanjoseca.gov/esd/cbs.htm>. South Bay Water Recycling

Permit No.95-117 was issued by the San Francisco Bay Regional Water Quality Control Board and does not have an expiration date. There have been no violations in the past three years.

Sewer System- Related Requirements. Recent state law requires development by the City of the first ever Sanitary Sewer Management Plan. The first phase, which requires development of goals, organization, emergency response plan, and a fats, oils and grease control program is due August 31, 2006. The next two phases are due August 31, 2007 and August 31, 2008. The City is on schedule for August 31, 2006 submittal. Because the Sanitary Sewer Management Plan is still in its formative stages, the City cannot predict the extent of costs associated with the Plan.

Historical Wastewater Flow

The following table sets forth the volume of wastewater collected by the Sewer System and pumped to the WPCP in the preceding ten fiscal years. Although wastewater flow remains fairly stable throughout the year, there is typically a slight increase in flows sent to the WPCP during wet weather months due to infiltration and inflow.

Table 1
CITY OF MILPITAS SEWER SYSTEM
Peak Week to Average Dry Weather Flow Ratio

<u>Year</u>	Reported Peak Week Flow (MGD)	Estimated Avg. Dry Weather Flow (MGD) ⁽¹⁾	Estimated Peak Week to Avg. Dry Weather Flow <u>Ratio</u>
1996	8.1	8.1	1.00
1997	9.5	9.4	1.01
1998	8.9	8.5	1.05
1999	8.8	8.4	1.04
2000	10.2	9.6	1.07
2001	9.0	9.0	1.00
2002	8.8	9.2	0.96
2003	10.14	8.56	1.19
2004	8.65	8.67	1.00
2005	9.36	8.88	1.05

(1) Average flow between June and October based on 1996-2005 flow data at main pump station.
Source: City of Milpitas.

Customer Base

The following table shows the number of sewer customers by class of customer. In fiscal year 2005-06, the City provided sewer service to approximately 15,310 customers. Residential customers comprise 92.6% of total accounts with single family residences alone accounting for approximately 82.0% of all customers.

Table 2
CITY OF MILPITAS SEWER SYSTEM
Sewer Accounts by Customer Class
Fiscal Year 2005-06

<u>User Groups</u>	<u>Accounts</u>	<u>Dwelling Units</u>
RESIDENTIAL		
Single Family Home	12,557	12,557
Multiple Family	1,613	5,484
Mobile Home	4	570
Subtotal – Residential Accounts	14,174	18,611
NON-RESIDENTIAL		
Commercial		
Hotels, motels, senior housing	30	
General offices, retail, shopping	478	
City of Milpitas accounts	35	
Service stations, repair shops, car washes	37	
Eating and drinking establishments	184	
Personal services (laundry, barber/beauty shops, cleaner)	44	
Subtotal – Commercial Accounts	808	
Industrial		
Jefferson Smurfit	1	
T. Marzetti	2	
Prudential Overall Supply	2	
Loral-Fairchild	4	
US Filter	2	
Sipex Corporation	3	
Lucky Pure Water	1	
Calistoga Mountain Spring Water	1	
Milpitas Material	1	
Union Pacific Railroad	1	
Headway Tech.	2	
Electrical/Electronics	196	
Machinery Manufacture	25	
Linear Technology	6	
Seagate Technology	5	
Subtotal – Industrial Accounts	252	
Institutional		
Schools/colleges	58	
Convalescent homes/day care	15	
Elmwood Rehabilitation	3	
Subtotal – Institutional Accounts	76	
Total	15,310	

Source: City of Milpitas.

The following table sets forth the Sewer System's major users and their flows for fiscal year 2005-06, based on a total annual flow of 1,623,778 HCF (3.33 MGD).

Table 3
CITY OF MILPITAS SEWER SYSTEM
Largest Users

Business Name	Type of Use	FY 2005-06 Flow (MGD)	% of Flow
Dynamic Details	Industrial	0.39	11.7%
Elmwood Correctional Facility	Government	0.34	10.2%
Magic Technologies	Industrial	0.25	7.5%
Seagate Recording Media	Industrial	0.17	5.1%
U.S. Filter Corporation	Industrial	0.15	4.5%
Great Mall of the Bay Area	Retail Mall	0.14	4.2%
Linear Technology	industrial	0.14	4.2%
Sipex	Industrial	0.13	3.9%
Fairchild Imaging	Industrial	0.10	3.0%
Cisco Systems	Industrial	0.08	2.4%

Source: City of Milpitas.

Capital Improvement Programs

Sewer System. The City engaged Bartle Wells Associates to prepare a Financial Utility Master Plan (the “**Master Plan**”), which was completed in April 2003. The City anticipates that wastewater flows will increase over the next 20 years due to growth. Substantial growth is projected due to the Midtown Milpitas Specific Plan, which is projected to increase the City's population by 6,400 people over the next 20 years. Wastewater flow projections indicate that the City may need additional treatment capacity within the next 10 to 20 years due to growth, and even with slow growth, the City may exceed its 13.5 mgd capacity due to annual variation in sewer flows. The Master Plan proposes the following methods of increasing capacity:

- Purchase additional capacity in WPCP by using cash or debt (in both cases, funded by new development with connection fees);
- Purchase rights to use excess capacity held by other tributary agencies;
- Adopt mutual agreements with other tributary agencies for use of excess capacity when needed; and
- Pursue other regional solutions.

The City's 2006-07 Capital Budget and Financial Plan identifies the following four projects:

<u>Project</u>	<u>Proposed Amount</u>
Sewer Deficiency Program	\$ 400,000
Main Sewer Pump Station Improvements	13,200,000
Minor Sewer Projects (2007)	35,000
Sewer Replacement Study	<u>80,000</u>
Total	\$13,715,000

The 2006-07 Capital Budget and Financial Plan also identifies available financing sources for the proposed projects:

<u>Available Financing Source</u>	<u>Proposed Amount</u>
Sewer Fund	\$ 2,115,000
Certificates of Participation, 2006 Series A	9,200,000
Sewer Infrastructure Fund	400,000
Developer Contributions	<u>2,000,000</u>
Total	\$13,715,000

The City's 2006-11 Capital Improvement Program (Final Report) identifies a number of capital improvement projects and related capital costs, including those listed above, and assumes that all of the costs (except those financed with proceeds of the Certificates) would be paid from available moneys in the Sewer Fund and the Sewer Infrastructure Fund. Because these capital costs are not Operation and Maintenance Costs as defined in the Trust Agreement, they will not affect the availability of Net Revenues to make the Installment Payments.

WPCP. The City of San José has adopted a Capital Improvement Program for the WPCP for fiscal years 2007-2011. Revenues are derived from five sources, including the City of Milpitas and other Member Agencies (\$38.3 million), of which the City of Milpitas is responsible for \$9.3 million (24.3%). The \$38.3 million is a \$21.9 million increase (132.9%) compared to the 2006-2010 adopted Capital Improvement Program; the increase is attributable to additional capital investment plans.

The following table shows the City's historical share of WPCP capital improvement costs (based on information provided by the City of San José) for fiscal years 1999-2000 through 2005-06 and its share of projected costs for fiscal years 2006-07 through 2009-10 (from the 2007-2011 Capital Improvement Program). Because the WPCP-related capital costs are not Operation and Maintenance Costs as defined in the Trust Agreement, they will not affect the availability of Net Revenues to make the Installment Payments.

Table 4
CITY OF MILPITAS SEWER SYSTEM
City Share Of WPCP
Capital Improvement Program

<u>Fiscal Year</u>	<u>City Share (%)</u>	<u>City Share Amount (\$)</u>	<u>Total Projected Expenditures</u>
1999-00	6.040%	\$484,300	\$8,020,000
2000-01	6.040	353,300	5,849,000
2001-02	6.040	745,800	12,348,000
2002-03	6.040	607,900	10,063,000
2003-04	6.040	335,200	5,550,000
2004-05	6.570	4,185,000	63,703,000
2005-06	6.570	613,000	9,331,000
2006-07	7.126	974,800	13,679,500
2007-08	7.126	1,268,392	17,799,500
2008-09	7.126	1,102,143	15,466,500
2009-10	7.126	4,318,748	60,605,500
2010-11	7.126	802,067	11,255,500

REVENUES AND DEBT SERVICE COVERAGE

Sewer Rates and Revenues

General. The City currently recovers the cost of operating, maintaining, repairing, replacing and expanding the Sewer System through user fees, plus interest earnings. The user fees are:

- Sewer Service Charges
- Sewer Connection Fees
- Treatment Plant Fees
- Miscellaneous Revenues

Revenues derived from Sewer Connection and Treatment Plant Fees, pursuant to the Milpitas Municipal Code and subject to the limitations of California Government Code Sections 66000-66003 (“**AB1600**”), are placed into the Sewer Fund and are expended only for sewer, storm drain, industrial waste or hazardous waste purposes. All interest earnings on moneys held in the Sewer Fund are retained in the Sewer Fund. The methodology for developing the fee schedules for the above outlined charges is governed in part by the Milpitas Municipal Code and the SWRCB, acting on behalf of the EPA.

The Milpitas Municipal Code provides for the collection of Sewer Service Charges that are reasonably necessary for the acquisition, construction, reconstruction, maintenance and operation of the Sewer System, including payment of the Installment Payments and debt service for the revenue bonds used to finance the City's proportionate share of capital improvements at the WPCP. Additionally, the SWRCB and the EPA require that the City's wastewater income structure be such that users of the system pay according to use of the system and the quality of wastewater discharged into the system.

Rate Study. A Utility Rate Analysis for fiscal years 2005-06 and 2006-07 was prepared by the City in May 2005 (and updated in August 2005). The Rate Analysis relied on the Master Plan (see "THE SEWER SYSTEM - Capital Improvement Programs") to identify current and future facility improvement requirements and to identify future costs and long-term funding. The Master Plan recommended 9% rate increases in fiscal years 2003-04 through 2008-09 and 7% rate increases in fiscal years 2009-10 through 2011-12. The Utility Rate Analysis recommended and the City Council subsequently adopted 9% rate increases for fiscal years 2003-04 through 2006-07. *The City can provide no guarantees as to whether it will continue to raise rates as recommended in the Utility Rate Analysis.* Table 6 shows the City's bimonthly sewer charges and corresponding rate increases since 1999-2000.

Current Sewer Service Charges. The City's current sewer service rates were established by Ordinance 208.40 adopted on August 16, 2005, with current rates effective for utility bills issued on or after August 7, 2006 and for meters read on or after July 24, 2006.

The current Sewer Service Charges are summarized below.

Residential. Residential charges are bi-monthly for each dwelling unit.

Table 5
CITY OF MILPITAS SEWER SYSTEM
Bi-Monthly Sewer Service Charge – Residential

<u>Category</u>	<u>Bi-Monthly Charge</u>
Single Family Per Dwelling Unit	\$59.70
Multi Family Per Dwelling Unit	43.14
Mobile Home Parks per Dwelling Unit	26.88

Commercial, Industrial and Miscellaneous Premises.

Flat Rate: For non-residential accounts, there is a flat rate assessed every billing cycle during which normal billing takes place, regardless of the amount of sewage discharged, to defray billing and sewer system administration costs. The bi-monthly flat rate charge for fiscal year 2006-07 is \$10.08.

Quantity Charges: For each commercial, industrial, or miscellaneous premises, a charge for each one hundred cubic feet of water used per billing cycle is charged. Charges range from \$0.02 per 100cf to \$3.93 per 100cf, depending on the business or type of business.

Unmetered Wastes. When metering is not provided, or for newly constructed units, the City makes a reasonable estimate of the volume of water consumed to be used as a basis for sewer service charges.

Sewer Connection Fees. The City charges a Sewer Connection Fee for connection to the Sewer System. All development must be designed and installed in accordance with the Master Plan. Under the provisions of AB 1600, Sewer Connection Fees are used only for sewer expansion projects.

Revenue from the Sewer Connection Fee was \$223,158 for Fiscal Year 2005-06. The fees are identified below:

Residential: \$1,908 per single family residence; \$1,406 per unit for multi-family developments.

Non-Residential: \$8.52 per gallon of estimated average daily wastewater discharge.

If the estimated amount of sewage to be discharged exceeds the Master Plan limit, a developer impact fee may be assessed in lieu of off-site improvements.

Treatment Plant Fees. The City collects a Treatment Plant Fee as part of the building permit application. The fee is based on the amount and content of the proposed sewage discharge.

Revenue from the Treatment Plant Fee was \$601,568 for Fiscal Year 2005-06. The fees are identified below.

Residential: \$880 per single family dwelling unit; \$690 per condo / townhouse / multi-family; and \$440 per mobile home.

Non-residential: For each commercial, industrial or institutional connection having an estimated consecutive peak five-day dry weather sewage discharge of *less* than 5,000 gallons per day, the Treatment Plant Fee is based upon the type of use and rate described below. The fee is computed by multiplying the following rates times the estimated peak five-day discharge in HCF per day or fraction thereof. The peak five-day discharge is established by the City Engineer (subject to review based on data provided by the connecting party).

<u>Type of Use</u>	<u>Rate/HCF/Day</u>
High strength industrial/commercial; Restaurants, eating and drinking, retail food stores	\$4,200
Low strength industrial/commercial: All others	2,600

For each commercial, industrial or institutional connection having a consecutive peak five-day dry weather sewage discharge of 5,000 gallons per day or more, the Treatment Plant Fee is based upon the volume and the quality of the discharge based on the loading parameters of the WPCP. Set forth below are examples of typical fees:

Electronic R&D, Assembly	\$0.63/sq. ft.
Electronic Manufacturing	19.00/sq. ft.
Laundromat	14.15/sq. ft.
Motels	0.73/sq. ft.
Office	0.35/sq. ft.
Restaurant (Fast food, deli)	3.37/sq. ft.
Restaurant (Full Service)	5.84/sq. ft.
Retail Commercial	0.25/sq. ft.
Repair Shops, Service stations	1.74/sq. ft.
Warehouse, storage	0.18/sq. ft.

Historical Sewer Service Charges

The following table shows historical levels of the City's Sewer Service Charges:

Table 6
CITY OF MILPITAS SEWER SYSTEM
Historical Rates

<u>Fiscal Year</u>	Bi-monthly Single Family Sewer Service <u>Charge</u>	% Rate <u>Change</u>
1999-00	\$42.29	
2000-01	42.29	0%
2001-02	42.29	0%
2002-03	42.29	0%
2003-04	46.10	9%
2004-05	50.25	9%
2005-06	54.77	9%
2006-07	59.70	9%

Source: City of Milpitas.

Set forth in the following table are the City's monthly Sewer Service Charges for fiscal year 2006-07 and a comparison to surrounding communities.

Table 7
CITY OF MILPITAS SEWER SYSTEM
Fiscal Year 2006-07 Comparative Monthly Charges
(Single-Family Residential)

<u>Agency</u>	<u>Sewer Service Charge</u>
City of Santa Clara	\$10.54
City of Fremont	19.04
City of Union City	19.04
City of Mountain View	19.95
City of Cupertino	21.00
City of San Jose (Municipal)	21.63
San Jose Water Co.	21.63
City of Campbell	22.05
City of Los Gatos	22.05
City of Sunnyvale	22.10
City of Palo Alto	23.48
City of Santa Cruz	29.22
City of Milpitas (1)	29.85
City of San Mateo	32.22

*(1) Assumes a discharge volume of 233 gpd.
Source: City of Milpitas.*

Table 8
CITY OF MILPITAS SEWER SYSTEM
Fiscal Year 2006-07 Comparative Monthly Charges
(Multi-Family Residential)

<u>Agency</u>	<u>Sewer Service Charge</u>
City of Santa Clara	\$11.58
San Jose Water Company	12.36
City of San Jose (Municipal)	12.36
City of Sunnyvale	13.81
City of Campbell	15.35
City of Los Gatos	15.35
City of Fremont	16.82
City of Union City	16.82
City of Mountain View	19.95
City of Cupertino	21.00
City of Milpitas (1)	21.57
City of Santa Cruz	23.40
City of Palo Alto	23.48

*(1) Assumes a discharge volume of 166 gpd.
Source: City of Milpitas.*

Rate Setting Process

The City is required by the Installment Sale Agreement, at all times while any Certificates remain outstanding, to establish, fix prescribe and collect rates, fees and charges in connection with the Sewer System which will be sufficient to yield during each fiscal year, after making reasonable allowances for contingencies and error in the estimates, Gross Revenues equal to a specified amount (see “SECURITY FOR THE CERTIFICATES- Rate Covenants”).

The City Manager annually reviews the system of rates and charges as part of the budgetary process. In May of each year, the City Manager submits to the City Council a proposed operating budget for the fiscal year commencing the following July 1. The operating budget includes proposed expenditures and expenses and the means of financing them. Separate public hearings for utility rates and the operating budget are conducted by the City Council to obtain citizen comments. The City Council adopts utility rates by ordinance. The budget is adopted, prior to June 30, through passage of appropriate resolutions. The final adopted budget is subject to mid-year revisions to reflect any significant changes in expenditures or revenues due to State or federally mandated programs, emergencies, or other unforeseen occurrences. The City’s Revised Budget Guidelines, approved along with the adoption of the fiscal year 2006-07 Budget, states that:

- Sewer customer rates and fees will be reviewed and adjusted annually, if necessary,
- All utility enterprise funds will be operated in a manner similar to private enterprise, and as such, the City will set fees and user charges at a level that fully supports the total direct and indirect cost of the activity, including depreciation of assets, overhead charges, and reserves for unanticipated expenses and capital projects.
- The City will maintain a working capital reserve in the Sewer Fund of approximately 25% of the annual operating and maintenance expenses.

See “RISK FACTORS – Proposition 218” for information about the City’s compliance with Proposition 218 in connection with adopting rates for the Sewer System.

Billing and Collection

Sewer Service Charge. The Milpitas Sanitary Code authorizes the City to disconnect sewer service in the event of a failure to pay sewer service charges. Sewer service charges are collected by the San Jose Water Company and billed on a bi-monthly basis. Bills are due and payable within 15 days of the date of the bill. If payment is not received, a 5% late fee is assessed; then a final notice is sent, after which the account is sent to a collection agency.

Sewer Connection Fees; Treatment Plant Fees. The Sewer Connection Fee and Treatment Plant Fees are collected as part of the building permit and sewer connection permit application procedures. Permits are not granted until payment has been received.

Funds and Reserves

The City maintains four separate funds for the Sewer System. Each of these funds is treated as a separate accounting entity.

The Sewer Fund is the main operating fund of the Sewer System. The fund is used to pay for all operating and maintenance costs for wastewater collection and treatment. The fund is also used for ongoing capital and replacement projects as budgeted each year.

The Sewer CIP Fund is used for specific capital improvement projects that were budgeted in past years. Each year, the City sets aside the full cost of capital improvements approved that year by transferring money from the other three funds to the Sewer CIP Fund. The Sewer CIP Fund typically carries a significant balance that is reserved for the remaining costs of projects approved in prior years but still under construction.

The Treatment Plant Construction Fund is generally used to fund capital improvements at the WPCP or within the City's collection system. The main source of revenues for this fund is treatment plant connection fees and Sewer Connection Fees collected from new development. This fund may also be used to finance the acquisition of additional capacity in the WPCP.

The Sewer Infrastructure Fund was established in fiscal year 2000-01 to build reserves from surpluses in the Sewer Fund to offset the future costs of the repair and replacement of facilities reaching the end of their useful lives. The Sewer Infrastructure Fund is funded with transfers from the Sewer Fund.

Historical Revenues and Expenses

The following table presents audited revenues and expenses of the four combined Sewer Funds for Fiscal Year 2001-02 through Fiscal Year 2004-05 and unaudited revenues and expenses for Fiscal Year 2005-06.

Table 9
CITY OF MILPITAS SEWER SYSTEM
Sewer Fund
Historical Revenues and Expenses

	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	(Unaudited) <u>2005-06</u>
Operating Revenues:					
Charges for services	\$6,690,859	\$6,546,961	\$ 7,472,166	\$8,252,762	8,905,500
Other operating revenue					
Total Revenues	6,690,859	6,546,961	7,472,166	8,252,762	8,905,500
Operating Expenses:					
Purchased sewer capacity (1)	3,081,208	3,637,979	3,444,645	3,207,786	3,309,721
Personnel services	714,546	911,443	900,166	1,058,193	1,159,446
Services and supplies	211,446	455,349	507,282	463,392	573,850
Claims			156,723 (3)		
Depreciation	1,232,847	1,243,897	962,028	969,263	1,158,293
Repairs and maintenance	1,129,115	534,984	194,323	340,944	111,439
Total operating expenses	6,369,162	6,783,652	6,165,167	6,039,578	6,312,749
Operating income/(loss)	321,697	(236,691)	1,306,999	2,213,184	2,592,751
Nonoperating revenues (expenses):					
Interest income	1,231,934	950,481	854,801	405,631	600,960
Taxes and subsidies (2)	1,992,606	8,708,497 (4)	267,523	488,699	3,366,917
Loss on adjustment of capital assets					
Valuation		(2,072,830) (5)			
Total nonoperating revenues (expenses)	3,224,540	7,586,148	1,122,324	894,330	3,967,877
Income before contributions and transfers	3,546,237	7,349,457	2,429,323	3,107,514	6,560,628
Contributions	866,987	3,060	648,870	31,675	
Transfers in	233		1,664	1,000,000	193,961
Transfers out (6)	(2,333,620)	(2,581,275)	(3,410,926)	(2,221,471)	(2,592,174)
Change in net assets	2,079,837	4,771,242	(331,069)	1,917,718	4,162,415
Total new assets- beginning	66,925,515	69,005,352	73,776,594	73,445,525	75,363,243
Total net assets-ending	\$69,005,352	\$73,776,594	73,445,525	75,363,243	79,525,658

- (1) Purchased sewer capacity is solely an operating expense for the City's share of operating and maintaining the WPCP. It does not include the cost of purchasing additional capacity rights.
- (2) Taxes and subsidies consist primarily of impact fees from developers and reimbursements from outside agencies for their share of the capital improvement projects costs constructed by the City. In FY 02, \$1,135,632 of developers' impact fees were classified as other operating revenue but the revenues were classified as taxes and subsidies in subsequent years. For the purpose of comparison, developers' impact fees in FY 02 have been reclassified as taxes and subsidies in this table.
- (3) In FY 04, the fund settled a claim related to an incident of main sewer back up to three residences.
- (4) In FY 03, the fund received \$8.7 million from outside agencies to reimburse their share of the construction cost of a water recycling system.
- (5) In FY 03, the valuation of the Main Pump Station was written down to reflect overestimation of fixed asset values in prior years.
- (6) Transfers out consist primarily of reimbursement to the General Fund for the Sewer Fund's share of overhead and centralized costs. The reimbursements ranged from \$1.8 million to \$2.2 million per year. Remaining transfers represent reimbursement of other City funds for the Sewer Fund's share of capital project costs.

Source: City of Milpitas.

Outstanding Indebtness

The City has no outstanding indebtness payable from Sewer System revenues.

Pro Forma Statement of Revenues and Expenses

The table on the following page is a pro forma operations statement developed by the City. The table reflects a number of assumptions including the following:

Growth: The number of residential dwelling units is assumed to grow at 250 or 1.3% annually. An annual increase of 5,000 square feet of commercial space has also been assumed.

Rate adjustments: The future rate adjustments are those recommended by the Master Plan (9%, 9%, 9%, 7%, 7% for fiscal years 06/07, 07/08, 08/09, 09/10 and 10/11, respectively), although the City cannot guarantee that it will raise rates in future fiscal years either at all or at the recommended rate of increase.

Expenses: It is assumed operation and maintenance expenses of the City's own Sewer System will increase 3% per year. With respect to the City's share of operating and maintaining the WPCP, an annual increase of 3% is also assumed.

With respect to capital costs associated with the Sewer System, the City's fiscal year 2006-11 Proposed Capital Improvement Program identifies several projects for planning purposes. Except for fiscal year 2006-07, all future years' projects and their related funding require annual review and approval by the City Council and are therefore subject to change. The City records its infrastructure capital costs, including Sewer System capital costs as capital assets. All capital assets with limited useful lives are required to be depreciated over their estimated useful lives. Depreciation of all capital assets is recorded as an expense on the income statement and reduces the book value of the capital assets on the balance sheet. Because capital costs are not included in the definition of Operation and Maintenance Costs under the Installment Sale Agreement, they will not affect the availability of Net Revenues to make the Installments Payments.

With respect to the City's share of WPCP capital costs, Table 4 identifies the City's share of the WPCP capital costs in the next four years for planning purposes. The City records its share of the WPCP capital costs as its own capital assets and depreciates these costs over the estimated lives of the assets. As with Sewer System Capital Costs, WPCP-related capital costs are not included in Operation and Maintenance Costs and will not affect the availability of Net Revenues.

Table 10
CITY OF MILPITAS SEWER SYSTEM
Pro Forma Statement
of Financial Operations

	Projected 2006-07	Projected 2007-08	Projected 2008-09	Projected 2009-10	Projected 2010-11
Operating Revenues:					
Charges for services	\$9,739,431	\$10,686,514	\$11,725,182	\$12,628,210	\$13,600,209
Other operating revenue					
Total Revenues	9,739,431	10,686,514	11,725,182	12,628,210	13,600,209
Operating Expenses:					
Purchased sewer capacity	4,014,000	4,134,420	4,258,453	4,386,206	4,517,792
Personnel services	1,172,669	1,207,849	1,244,085	1,281,407	1,319,849
Services and supplies	828,915	853,783	879,395	905,778	932,952
Repairs and maintenance	149,115	153,588	158,196	162,942	167,830
Total operating expenses	6,164,699	6,349,640	6,540,129	6,736,333	6,938,423
Operating income/(loss)	3,574,732	4,336,874	5,185,053	5,891,877	6,661,786
Installment Payments *	830,000	830,000	830,000	830,000	830,000
Debt Coverage Ratio	4.3	5.2	6.2	7.1	8.0
Nonoperating revenues (expenses):					
Interest income	624,998	649,998	675,998	703,038	731,160
Taxes and subsidies	535,390	535,390	535,390	535,390	1,554,046
Depreciation	(1,158,293)	(1,158,293)	(1,158,293)	(1,422,293)	(1,422,293)
Total nonoperating revenues (expenses)	2,095	27,095	53,095	(183,865)	862,913
Income before contributions and transfers	2,746,827	3,533,969	4,408,148	4,878,012	6,694,699
Contributions					
Transfers in					
Transfers out	(2,109,137)	(2,172,261)	(2,237,279)	(2,304,247)	(2,373,225)
Changes in net assets	637,690	1,361,708	2,170,869	2,573,765	4,321,474
Total new assets - beginning	79,525,658	80,163,348	81,525,056	83,695,925	86,269,690
Total new assets – ending	\$80,163,348	\$81,525,056	\$83,695,925	\$86,269,690	\$90,591,164

Source: City of Milpitas.

* Preliminary; subject to change.

RISK FACTORS

The following factors, along with other information in this Official Statement, should be considered by potential investors in evaluating the risks in the purchase of the Certificates.

Sewer System Demand

There can be no assurance that the local demand for sewer service provided by the Sewer System will be maintained at levels described in this Official Statement under the heading “THE SEWER SYSTEM.” Reduction in the level of demand could require an increase in rates or charges in order to produce Net Revenues sufficient to comply with the City’s rate covenant in the Installment Sale Agreement. Such rate increases could increase the likelihood of nonpayment, and could also further decrease demand. Furthermore, there can be no assurance that any other entity with regulatory authority over the Sewer System will not adopt further restrictions on operation of the Sewer System.

Sewer System Expenses

There can be no assurance that Operation and Maintenance Costs of the Sewer System will be consistent with the levels described in this Official Statement. Changes in technology, increases in the cost of energy or other expenses would reduce Net Revenues, and could require substantial increases in rates or charges in order to comply with the rate covenant. Such rate increases could increase the likelihood of nonpayment, and could also decrease demand.

Parity Debt

Although the City has covenanted not to issue additional obligations payable from Net Revenues senior to the Installment Payments, the Installment Sale Agreement permits the issuance by the City of certain indebtedness which may have a lien upon the Net Revenues which is on a parity basis to the lien which secures the Installment Payments, if certain coverage tests are met (see “THE CERTIFICATES – Limitations on Parity Debt and Superior Obligations” herein). These coverage tests involve, to some extent, projections of Net Revenues. If such indebtedness is issued, the debt service coverage for the Certificates will be diluted below what it otherwise would be subject to under the coverage tests. Moreover, there is no assurance that the assumptions which form the basis of such projections, if any, will be actually realized subsequent to the date of such projections. If such assumptions are not realized, the amount of future Net Revenues may be less than projected, and the actual amount of Net Revenues may be insufficient to provide for the payment of the Installment Payments and such additional indebtedness.

Natural Disasters

The City, like all northern California communities, is likely to subject to unpredictable seismic activity, fires or floods. If there were a severe seismic, flood or fire event in the City, there could be substantial damage to and interference with the City, including the Sewer System, which could impact the receipt of Revenues and adversely affect the City’s ability to pay debt service on the 2006 Bonds.

Seismic. The City is an area of significant seismic activity and, therefore, is subject to potentially destructive earthquakes. According to the City of Milpitas Seismic and Safety Element, dated March 19, 2002, the City's infrastructure is at risk from seismic events of the Hayward, San Andreas, and Calaveras faults (all active faults). The probability of one or more large earthquakes of magnitude 6.7 and above over the next 30 years is estimated to be 70% or higher.

Earthquake hazards consist of hazards produced by surface ruptures, and hazards produced by ground shaking. Only the Hayward fault zone is located within the City and is capable of producing surface rupture in the City. The occurrence of large earthquakes on the Hayward, Calaveras and San Andreas faults could produce ground shaking sufficient to cause extensive damage. The Hayward fault, which extends from San Pablo Bay to San Jose, has produced earthquakes in 1836 and 1868 with estimated Richter magnitudes of 7.0 and 6.9.

A Geotechnical Engineering Investigation Report, Main Sewage Pump Station Project was prepared in December 2005 by DMC Engineering, in connection with the design of the new Pump Station Project. The report notes that recent paleoseismic studies by the Working Group on California Earthquake Probabilities indicate that there is a 62% probability that one or more large (magnitude 6.7 or greater) earthquakes will occur in the San Francisco Bay area within 30 years. Probabilistic seismic hazard analyses performed by the California Geological Survey estimate a peak ground acceleration of about 0.6g at the Pump Station site with a 10% probability of exceedence in 50 years (a seismic recurrence interval of one event in 475 years). Damage could include ground cracks, and breakage of underground pipelines. In addition, the report concludes the site is subject to high to very high liquefaction susceptibility and hazard levels.

The report includes a number of recommendations for design and construction of the proposed pump station. The City is following the recommendations.

Flood. According to the City of Milpitas Seismic and Safety Element, dated March 19, 2002, approximately half of the City lies within a Special Flood Hazard Area. Almost all land west of the Southern Pacific Railroad line lies within the 100-year flood zone and all land west of Interstate 680 is part of a 500-year flood zone. The Federal Emergency Management Agency designates specific flood zones. A map dated June 22, 1998 can be viewed at its website <http://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView>. The Project site is located in an area described as follows: "This area protected from the one percent annual chance (one hundred -year) flood by levee, dike, or other structures subject to possible failure or overtopping during larger floods".

In addition, according to the state Office of Emergency Services for Santa Clara County, parts of the City along the Calaveras Road area east of Interstate 680 could be inundated by failure of the 38-foot high Sandy Wool Lake Dam. The Project site is located approximately 2.5 miles northwest of the I-680 / Calaveras road intersection. It is unlikely that overland flow would reach the project site.

Proposition 218

General. On November 5, 1996, California voters approved Proposition 218, the so-called "Right to Vote on Taxes Act." Proposition 218 added Articles XIIC and XIID to the State Constitution, which affect the ability of local governments to levy and collect both existing and future taxes, assessments, and property-related fees and charges. Proposition 218, which generally became effective on November 6, 1996, changed, among other things, the procedure for the imposition of any new or increased property-related "fee" or "charge," which is defined as "any levy other than an ad valorem tax, a special tax or an assessment, imposed by a [local government] upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property related service" (and referred to in this section as a "property-related fee or charge").

Specifically, under Article XIID, before a municipality may impose or increase any property-related fee or charge, the entity must give written notice to the record owner of each parcel of land affected by that fee or charge. The municipality must then hold a hearing upon the proposed imposition or increase at least 45 days after the written notice is mailed, and, if a majority of the property owners of the identified parcels present written protests against the proposal, the municipality may not impose or increase the property-related fee or charge.

Further, under Article XIID, revenues derived from a property-related fee or charge may not exceed the funds required to provide the "property-related service" and the entity may not use such fee or charge for any purpose other than that for which it imposed the fee or charge. The amount of a property-related fee or charge may not exceed the proportional cost of the service attributable to the parcel, and no property-related fee or charge may be imposed for a service unless that service is actually used by, or is immediately available to, the owner of the property in question.

In addition, Article XIIC states that "the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives."

Judicial Interpretation of Proposition 218. After Proposition 218 was enacted in 1996, appellate court cases and an Attorney General opinion initially indicated that fees and charges levied for water and wastewater services would not be considered property-related fees and charges, and thus not subject to the requirements of Article XIID regarding notice, hearing and protests in connection with any increase in the fees and charges being imposed. However, three recent cases have held that certain types of water and wastewater charges could be subject to the requirements of Proposition 218 under certain circumstances.

In *Richmond v. Shasta Community Services District* (9 Cal. Rptr. 3d 121), the California Supreme Court addressed the applicability of the notice, hearing and protest provisions of Article XIID to certain charges related to water service. In *Richmond*, the Court held that connection charges are not subject to Proposition 218. The Court also indicated in dictum that a fee for

ongoing water service through an existing connection could, under certain circumstances, constitute a property-related fee and charge, with the result that a local government imposing such a fee and charge must comply with the notice, hearing and protest requirements of Article XIID.

In *Howard Jarvis Taxpayers Association v. City of Fresno* (March 23, 2005), the California Court of Appeal, Fifth District, concluded that water, sewer and trash fees are property-related fees subject to Proposition 218 and a municipality must comply with Article XIID before imposing or increasing such fees. The California Supreme Court denied the City of Fresno's petition for review of the Court of Appeal's decision on June 15, 2005.

In July 2006 the California Supreme Court, in *Bighorn-Desert View Water Agency v. Verjil* (S127535, July 24, 2006), addressed the validity of a local voter initiative measure that would have (a) reduced a water agency's rates for water consumption (and other water charges), and (b) required the water agency to obtain voter approval before increasing any existing water rate, fee, or charge, or imposing any new water rate, fee, or charge. The court adopted the position indicated by its statement in *Richmond* that a public water agency's charges for ongoing water delivery are "fees and charges" within the meaning of Article XIID, and went on to hold that charges for ongoing water delivery are also "fees" within the meaning of Article XIIC's mandate that the initiative power of the electorate cannot be prohibited or limited in matters of reducing or repealing any local tax, assessment, fee or charge. Therefore, the court held, Article XIIC authorizes local voters to adopt an initiative measure that would reduce or repeal a public agency's water rates and other water delivery charges. (However, the court ultimately ruled in favor of the water agency and held that the entire initiative measure was invalid on the grounds that the second part of the initiative measure, which would have subjected future water rate increases to prior voter approval, was not supported by Article XIIC and was therefore invalid.)

The court in *Bighorn* specifically noted that it was not holding that the initiative power is free of all limitations; the court stated that it was *not* determining whether the electorate's initiative power is subject to the statutory provision requiring that water service charges be set at a level that will pay for operating expenses, provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due.

Proposition 218 and the City of Milpitas's Wastewater Rates. The City's current wastewater rate structure was adopted by Ordinance No. 208.40 on August 16, 2005. The City took the following actions to meet the requirements of Proposition 218:

- Residential and non-residential mailers were sent to property owners on July 1, 2005;
- Water and sewer ordinances were updated to address the Proposition 218 notice requirements and to revise the effective date;

- Water and sewer ordinances were re-introduced at the August 2, 2005 Council meeting, and were adopted on August 16, 2005; and
- A protest hearing was conducted, and the Water and Sewer Rate Ordinances became effective for utility bills issued on or after September 19, 2005 with the 2006-07 rates effective for utility bills issued on or after August 7, 2006.

The City will continue to comply with the provisions of Proposition 218 in connection with future rate increases.

Conclusion. It is not possible to predict how courts will further interpret Article XIII C and Article XIII D in future judicial decisions, and what, if any, further implementing legislation will be enacted.

Under the *Bighorn* case, local voters could adopt an initiative measure that reduces or repeals the City's rates and charges, although it is not clear whether (and California courts have not decided whether) any such reduction or repeal by initiative would be enforceable in a situation in which such rates and charges are pledged to the repayment of bonds or other indebtedness.

There can be no assurance that the courts will not further interpret, or the voters will not amend, Article XIII C and Article XIII D to limit the ability of local agencies to impose, levy, charge and collect increased fees and charges for utility service, or to call into question previously adopted utility rate increases.

Limited Recourse on Default

If the City defaults on its obligation to make Installment Payments, the Trustee, as assignee of the Authority, has the right to accelerate the total unpaid principal amounts of the Installment Payments. However, in the event of a default and such acceleration there can be no assurance that the City will have sufficient Net Revenues to pay the accelerated Installment Payments.

Limitations on Remedies Available; Bankruptcy

The enforceability of the rights and remedies of the Owners and the obligations of the City may become subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; equitable principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent

in the sovereignty of the State and its governmental bodies in the interest of servicing a significant and legitimate public purpose. Bankruptcy proceedings, or the exercising of powers by the federal or State government, if initiated, could subject the Owners to judicial discretion and interpretation of their rights in bankruptcy or otherwise and consequently may entail risks of delay, limitation, or modification of their rights.

No Obligation to Tax

The obligation of the City to pay the Installment Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Installment Payments does not constitute a debt or indebtedness of any City, the State of California or any of its political subdivisions, within the meaning of any constitutional or statutory debt limitation or restriction.

Change in Law

In addition to the other limitations described herein, the California electorate or Legislature could adopt a constitutional or legislative property tax decrease or an initiative with the effect of reducing revenues payable to or collected by the City. There is no assurance that the California electorate or Legislature will not at some future time approve additional limitations that could have the effect of reducing the Net Revenues and adversely affecting the security of the Certificates.

Loss of Tax Exemption

As discussed in this Official Statement under the caption “CONCLUDING INFORMATION – Tax Matters,” interest with respect to the Certificates could become includable in gross income for purposes of federal income taxation retroactive to the date the Certificates were issued, as a result of future acts or omissions of the City in violation of its covenants in the Installment Sale Agreement or Trust Agreement. Should such an event of taxability occur, the Certificates are not subject to a special prepayment and will remain outstanding until maturity or until prepaid under one of the other prepayment provisions contained in the Trust Agreement.

CONTINUING DISCLOSURE

The City has covenanted for the benefit of the Owners to provide certain financial information and operating data relating to the City and the Sewer System by not later than nine months after the end of the City's Fiscal Year (presently June 30) in each year commencing with its report for the 2005-06 Fiscal Year (the "**City Annual Report**") and to provide notices of the occurrence of certain enumerated events. The City Annual Report will be filed by the City with each Nationally Recognized Municipal Securities Information Repository. The notices of material events will be filed by the City with the Municipal Securities Rulemaking Board. These covenants have been made in order to assist the Underwriter in complying with Securities Exchange Commission Rule 15c2-12(b)(5). The specific nature of the information to be contained in the City Annual Report or the notices of material events by the City is contained in "APPENDIX E - FORM OF CONTINUING DISCLOSURE CERTIFICATE." Failure of the City to provide the required ongoing information may have a negative impact on the value of the Certificates in the secondary market.

The City has had no instance in the previous five years in which it failed to comply in all material respects with any previous continuing disclosure obligation under the Rule.

CONCLUDING INFORMATION

Underwriting

The Certificates are offered for sale at the initial prices stated on the cover page of this Official Statement, which may be changed from time to time by the Underwriter. The Certificates may be offered and sold to certain dealers at prices lower than the public offering prices.

Legal Opinions

All legal matters in connection with the issuance of the Certificates are subject to the approval of Jones Hall, A Professional Law Corporation, San Francisco, California, Special Counsel. A copy of the approving opinion of Special Counsel will be provided to the registered owners of the Certificates, and the form of such opinion is attached hereto as APPENDIX D. Certain legal matters will be passed upon for the City by the City Attorney, and Jones Hall, A Professional Law Corporation, as Disclosure Counsel.

Tax Matters

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Special Counsel, subject, however to the qualifications set forth below, under existing law, the portion of Installment Payments designated as and comprising interest and received by the owners of the Certificates is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings, [**confirm**, and the Installment Sale

Agreement is a "qualified tax-exempt obligation" within the meaning of section 265(b)(3) of the Internal Revenue Code of 1986 (the "Code") such that, in the case of certain financial institutions (within the meaning of section 265(b)(5) of the Code), a deduction for federal income tax purposes is allowed for 80 percent of that portion of such financial institution's interest expense allocable to interest payable with respect to the Certificates].

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1984, as amended (the "**Tax Code**") that must be satisfied subsequent to the delivery of the Installment Sale Agreement in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of delivery of the Installment Sale Agreement.

If the initial offering price to the public (excluding bond houses and brokers) at which a Certificate is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which each Certificate is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount is disregarded. Owners of such Certificates should consult their own tax advisors with respect to the tax consequences of ownership of Certificates with original issue discount or original issue premium, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount and original issue premium on such Certificates under federal individual and corporate alternative minimum taxes.

In the further opinion of Special Counsel, interest payable with respect to the Certificates is exempt from California personal income taxes.

Owners of the Certificates should also be aware that the ownership or disposition of, or the accrual or receipt of interest with respect to, the Certificates have federal or state tax consequences other than as described above. Special Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Installment Sale Agreement and the Certificates other than as expressly described above.

The form of the opinion of Special Counsel is attached hereto as APPENDIX D.

Litigation

In 2005, the City filed suit against the City of San José with respect to the North San Jose Environmental Impact Report. See "THE SEWER SYSTEM – San Jose/Santa Clara Water Pollution Control Plant for a discussion of the litigation. The City does not expect the resolution

of this litigation to impact the availability of Net Revenues for payment of the Installment Payment.

The City is not aware of any litigation pending or threatened questioning the existence or powers of the City or the ability of the City to pay principal or interest with respect to the Certificates.

Although the City is subject to a number of lawsuits in the ordinary conduct of its affairs, there are no claims or actions, threatened or pending which, if determined against the City, either individually or in the aggregate, would have a material adverse effect on the financial conditions of the City or the Sewer Fund.

Financial Advisor

The City has retained E. Wagner & Associates, Inc. of Pleasanton, California, as financial advisor (the “**Financial Advisor**”) in connection with the issuance of the Certificates. The Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy or completeness of the information contained in this Official Statement.

Professional Fees

In connection with the execution and delivery of the Certificates, fees payable to the Financial Advisor, Special Counsel, Disclosure Counsel and the Trustee are contingent upon the execution and delivery of the Certificates.

Ratings

Standard & Poor’s Credit Market Services, a division of The McGraw Hill Companies, Inc. (“**Standard & Poor’s**”) and Moody’s Investors Service (“**Moody’s**”) have assigned their respective municipal bond rating of “AAA” and “AAA” to the Certificates with the understanding that upon delivery of the Certificates, an insurance policy insuring the scheduled payment when due of the principal and interest in respect of the Certificates will be issued by the Insurer.

In addition, Standard & Poor’s and Moody’s have assigned their respective underlying municipal bond rating of “__” and “__” to the Certificates.

The ratings reflect only the views of such organizations, and an explanation of the significance of such ratings may be obtained from Standard & Poor’s and Moody’s. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, if, in the judgment of such respective rating agencies, circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Certificates.

Miscellaneous

All of the descriptions of California laws, other applicable legislation, the Installment Sale Agreement, the Trust Agreement, the Sewer System, the City, the Authority, agreements and other documents are made subject to the provisions of such legislation and documents respectively and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents on file with the City for further information in connection therewith.

Any statements made in this Official Statement involving matters of opinion or estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized.

The execution and delivery of this Official Statement has been duly authorized by the City.

CITY OF MILPITAS

By: _____
Director of Financial Services

APPENDIX A

SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX B**CITY OF MILPITAS GENERAL DEMOGRAPHIC AND FINANCIAL INFORMATION****General Description**

The City of Milpitas (the "City") was incorporated in January 1954 and is located 45 miles south of San Francisco in the northern part of Santa Clara County. Once a small agricultural town and later a stop-over point for travelers between Oakland and San Jose, Milpitas has blossomed into one of the world's premier computer and semiconductor producers. Milpitas is often called the "Crossroads of Silicon Valley with most of its 13.63 square miles of land situated between two major freeways (I-880 and I-680), State Route 237 and a County Expressway.

The City has a very diversified residential population of 65,276 in 2006. Milpitas is an affluent and well-educated community with an average household income of \$98,979 and more than 65% of households have an annual incomes that exceed \$75,000. The homeownership rate is close to 70% with a median home value of \$745,000. Milpitas's housing market remains affordable relative to the majority of Santa Clara County.

ECONOMIC AND DEMOGRAPHIC INFORMATION

The City is located at the southeastern tip of the San Francisco Bay.. The City is a progressive community that is an integral part of the high tech Silicon Valley. Tremendous commercial and industrial growth has occurred in the area during the past decade, adding to the supply of buildings available for office space and electronics manufacturing.

The City's 2006 population was estimated at 65,276, which represents an increase of approximately 9.9 percent since 1997. Table 1 shows the populations of the City and the County from 1997 to 2006.

Table 1
CITY, COUNTY AND STATE POPULATION STATISTICS

	City of Milpitas	Percent of Change	County of Santa Clara	Percent of Change
1997.....	59,400	—	1,612,700	—
1998.....	60,300	1.52	1,638,300	1.59
1999.....	61,800	2.49	1,658,000	1.20
2000.....	62,700	1.46	1,679,200	1.28
2001.....	63,007	0.49	1,701,317	1.32
2002.....	63,617	0.97	1,715,301	0.82
2003.....	64,936	2.07	1,726,791	0.67
2004.....	64,881	-0.08	1,738,374	0.67
2005.....	64,751	-0.20	1,752,653	0.82
2006.....	65,276	0.80	1,773,258	1.18

Source: State Department of Finance estimates as of January 1.

Employment

Santa Clara County provides a wide range of employment opportunities to residents of the Milpitas area. Milpitas is in the Silicon Valley, the center of the electronics, and high technology communications industries. An efficient freeway network combined with regular commuter bus service, which connects with the Bay Area Rapid Transit (BART) and CalTrain systems, enable City residents to work anywhere in the Bay Area.

Table 2
SANTA CLARA COUNTY
ESTIMATED AVERAGE ANNUAL EMPLOYMENT AND
UNEMPLOYMENT OF RESIDENT LABOR FORCE

Civilian Labor Force					
County of Santa Clara (<i>in thousands</i>)	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006⁽¹⁾</u>
Employed	815.8	779.1	774.1	778.7	773.0
Unemployed	<u>75.7</u>	<u>72.3</u>	<u>54.9</u>	<u>45.0</u>	<u>35.2</u>
Total	891.5	851.4	829.0	823.7	808.2
Unemployment Rates					
County	8.5%	8.5%	6.6%	5.5%	4.4%
State	6.7	6.8	6.2	5.4	4.6
United States	5.8	6.0	5.5	5.4	4.6

⁽¹⁾ Data as of May 2006. Data are not seasonally adjusted.

Source: California Employment Development Department, Labor Market Information Division for the State and County; U.S. Bureau of Labor, Department of Labor Statistics for the U.S.

The high technology boom has spawned the term "Silicon Valley" by which the County is known worldwide. The silicon-based semiconductor industry, however, is only a part of the industrial picture with rapid increases occurring in information systems, computers, peripherals, instruments, software and a wide array of communication electronics.

The City lies near the geographic center of Silicon Valley. The City expects its economy will continue to diversify as the high technology industry in the metropolitan area evolves into an increasingly diverse array of research, development, manufacturing, marketing and corporate headquarters functions.

Development of high technology has been enhanced by the area's proximity to Stanford University, San Jose State University, Santa Clara University and other institutions of higher education, and such research and development facilities as SRI International (formerly the Stanford Research Institute), the Stanford Linear Accelerator Center and Ames Research Center (NASA).

The State Employment Development Department estimates 868,300 wage and salary jobs for Santa Clara County in 2005. Table 3 shows the breakdown of wage and salary employment for the County and State of California.

Table 3
SANTA CLARA COUNTY
ESTIMATED AVERAGE ANNUAL EMPLOYMENT
NONAGRICULTURAL WAGE AND SALARY WORKERS
(in thousands)

	County						California					
	<u>2003</u>	<u>% of</u> <u>Total</u>	<u>2004</u>	<u>% of</u> <u>Total</u>	<u>2005</u>	<u>% of</u> <u>Total</u>	<u>2003</u>	<u>% of</u> <u>Total</u>	<u>2004</u>	<u>% of</u> <u>Total</u>	<u>2005</u>	<u>% of</u> <u>Total</u>
Mining	0.1	0.01	0.1	0.01	0.2	0.02	22.2	0.15	22.8	0.16	23.3	0.16
Construction	41.6	4.78	43.0	4.99	44.3	5.10	796.8	5.54	850.4	5.85	901.8	6.10
Manufacturing												
Durable Goods.....	169.9	19.53	162.3	18.83	159.0	18.31	986.9	6.86	975.6	6.71	967.9	6.55
Non-Durable Goods	12.8	1.47	11.9	1.38	12.2	1.41	566.1	3.93	557.4	3.84	544.8	3.68
Transportation and												
Public Utilities.....	14.3	1.64	13.5	1.57	13.2	1.52	480.6	3.34	482.8	3.32	487.1	3.29
Wholesale Trade.....	34.1	3.92	34.5	4.00	35.6	4.10	649.5	4.51	655.1	4.51	673.1	4.55
Retail Trade	83.6	9.61	82.8	9.61	83.4	9.60	1,588.4	11.04	1,617.8	11.13	1,654.2	11.19
Information.....	31.3	3.60	32.6	3.78	34.7	4.00	476.2	3.31	482.4	3.32	475.0	3.21
Financial Activities	35.1	4.03	35.4	4.11	36.2	4.17	885.8	6.15	902.2	6.21	926.8	6.27
Professional & Bus. Svcs	160.3	18.43	158.6	18.40	159.6	18.38	2,073.3	14.41	2,085.1	14.35	2,147.7	14.53
Educational & Health												
Services.....	93.5	10.75	95.0	11.02	96.5	11.11	1,536.4	10.68	1,560.0	10.74	1,584.5	10.72
Leisure & Hospitality	68.9	7.92	70.9	8.23	72.3	8.33	1,400.2	9.73	1,439.4	9.91	1,474.4	9.97
Other Services ⁽²⁾	25.3	2.91	25.0	2.90	25.1	2.89	504.3	3.50	53.9	3.47	510.7	3.45
Government	99.2	11.40	96.3	11.17	96.0	11.06	2,425.5	16.85	2,395.5	16.49	2,413.9	16.33
Total All Industries ⁽¹⁾	<u>870.0</u>		<u>862.0</u>		<u>868.3</u>		<u>14,392.2</u>		<u>14,530.4</u>		<u>14,785.2</u>	

⁽¹⁾ Totals may not add due to independent rounding.

Sources: California Employment Development Department, Labor Market Information Division for the County; U.S. Bureau of Labor, Department of Labor Statistics for the U.S.

Major Employers

There are 400 manufacturing plants in Milpitas. Leading group classes of product include electronics, machinery and chemicals. The following table shows the major Milpitas employers, estimated as of June 2005, based on the number of employees.

Table 4
CITY OF MILPITAS
TEN LARGEST EMPLOYERS
(ranked by employment size)

	Company/Organization	Type of Industry	Number of Employees
1	Great Mall	Retail Outlet Center	3,000
2	CISCO Systems, Inc.	Internet Network Supplies	3,000
3	Lifescan, Inc.	Medical Device Company	2,500
4	LSI Logic Corporation	Manufacturer of Storage Semiconductors	1,320
5	Seagate Technology	Manufacturer of Hard Drives	1,100
6	Soletron Corporation	Contract Manufacturer Services	1,000
7	KLA-Tencor Corporation	Manufacturer of Semiconductors	1,000
8	Linear Technology	Semiconductors	900
9	Milpitas Unified School District	School District	849
10	Adaptec, Inc.	Controllers for Disk Drives	505

Source: City of Milpitas Comprehensive Annual Financial Report, June 30, 2005.

Taxable Sales

The City of Milpitas accounted for \$1,199,855,000 (or 4.2%) of the total \$28,491,576,000 in the County total taxable sales for 2004. Table 5 sets forth a history of taxable sales for the City from 2000 through 2004. Itemized data for 2005 are not yet available.

Table 5
CITY OF MILPITAS
TAXABLE SALES
(in thousands)

	2000	2001	2002	2003	2004
Apparel stores.....	\$ 109,258	\$ 113,729	\$ 109,078	\$ 114,599	\$ 123,583
General merchandise stores.....	117,006	118,362	115,336	113,574	119,471
Food stores	37,075	37,302	35,830	33,765	32,950
Eating and drinking establishments	170,825	166,174	159,420	152,736	156,318
Home furnishings and appliances	123,801	72,493	48,513	45,497	54,460
Building materials and farm implements	66,251	66,570	70,600	#	#
Auto dealers and auto supplies.....	38,105	38,684	32,433	25,558	19,990
Service stations.....	61,244	58,395	52,369	58,491	71,231
Other retail stores	194,086	184,594	156,196	227,373 #	251,599 #
Retail Stores Total.....	\$ 917,651	\$ 856,303	\$ 779,775	\$ 771,593	\$ 829,602
All other outlets	673,677	489,438	373,179	301,404	370,253
TOTAL ALL OUTLETS	<u>\$1,591,328</u>	<u>\$1,345,741</u>	<u>\$ 1,152,954</u>	<u>\$ 1,072,997</u>	<u>\$ 1,199,855</u>

Sales omitted because their publication would result in the disclosure of confidential information, these are included with "Other retail stores" when possible

• Source: California State Board of Equalization, Research and Statistics Division

Construction Activity

A ten-year history of building permits and valuation appears in the following table:

Table 6 CITY OF MILPITAS BUILDING PERMIT VALUATION			
Fiscal Year	Building Permit Revenue	Estimated Construction Value	Business License Revenue
1997	\$3,503,302	\$170,600,000	\$260,554
1998	3,438,100	211,859,437	265,988
1999	3,496,053	181,604,619	290,715
2000	5,252,758	340,307,254	263,830
2001	5,278,252	390,318,202	288,461
2002	1,618,690	92,367,236	290,694
2003	1,160,417	45,086,363	274,168
2004	1,404,144	58,709,321	272,269
2005	2,738,492	122,051,634	274,461
2006*	5,173,981	256,009,263	280,663

Unaudited

Source: City of Milpitas Comprehensive Annual Financial Report, June 30, 2005.

Property Taxes and Assessed Valuations

The assessed valuation of property is established by the County Assessor, and reported at 100% of the full cash value as of January 1, except for public utility property, which is assessed by the State Board of Equalization.

The County collects the ad valorem taxes. Taxes arising from the one percent levy are apportioned among local taxing agencies on the basis of a formula established by State law in 1979. Under this formula, the City receives a base year allocation plus an allocation on the basis of growth in assessed value (consisting of new construction, change of ownership and inflation). Taxes relating to voter-approved indebtedness are allocated to the relevant taxing agency. Beginning in fiscal year 1990-91 (with the adoption of new State legislation), the County deducts the pro-rata cost of collecting property taxes from the City's allocation.

The California Community Redevelopment Law authorizes redevelopment agencies to receive the allocation of tax revenues resulting from increases in assessed valuations of properties within designated project areas. In effect, the other local taxing authorities realize tax revenues from such properties only on the base year valuations which are frozen at the time a redevelopment project area is created. The tax revenues which result from increases in assessed valuations flow to the redevelopment areas. The City has created redevelopment project areas pursuant to California law. Generally, funds must be spent within the redevelopment areas in which the tax increment revenues were generated, and may only be spent on projects which qualify under California redevelopment law.

The following tables show historical assessed valuation of property, property tax rates, special assessment billings and collections and principal taxpayers within the City. The County operates on a Teeter Plan whereby taxing entities, including the City, are held harmless for property tax delinquencies.

Table 7
CITY OF MILPITAS
ASSESSED VALUE OF TAXABLE PROPERTY
FISCAL YEAR 1997-2006

Fiscal Year	Assessed Value	Valuation Increase (Decrease)	
		Amount	Percent
1997	\$5,471,124,740	\$240,636,701	4.6%
1998	6,452,227,183	981,102,443	17.9
1999	6,919,759,225	467,532,042	7.2
2000	7,455,656,487	535,897,262	7.7
2001	7,933,130,135	477,473,648	6.4
2002	9,376,419,929	1,443,289,794	18.2
2003	9,822,837,665	446,417,736	4.8
2004	9,397,563,471	(425,274,194)	-4.3
2005	9,338,956,876	(58,606,595)	-0.6
2006*	9,960,540,427	621,583,551	6.7

* Unaudited

Source: City of Milpitas Comprehensive Annual Financial Report, June 30, 2005.

Table 8
PROPERTY TAX RATES
ALL DIRECT AND OVERLAPPING GOVERNMENTS
FISCAL YEAR 1997-2006

Fiscal Year	Basic Countywide Levy	Special County Rates	School District	Special Districts	Total
1997	\$1.000	\$0.0365	\$0.0501	\$0.0102	\$1.0968
1998	1.000	0.0412	0.0266	0.0098	1.0776
1999	1.000	0.0405	0.0464	0.0082	1.0951
2000	1.000	0.0343	0.0601	0.0085	1.1029
2001	1.000	0.0380	0.0615	0.0075	1.1070
2002	1.000	0.0388	0.0496	0.0062	1.0946
2003	1.000	0.0412	0.0567	0.0072	1.1051
2004	1.000	0.0412	0.0582	0.0075	1.1069
2005	1.000	0.0412	0.0624	0.0086	1.1122
2006*	1.000	0.0412	0.0881	0.0078	1.1371

* Unaudited

Source: City of Milpitas Comprehensive Annual Financial Report, June 30, 2005.

Table 9
SPECIAL ASSESSMENT BILLINGS AND COLLECTIONS
FISCAL YEAR 1997-2006

Fiscal Year	Assessment Levied	Assessment Collections	Percent Collected
1997	\$4,295,924	\$4,428,416	103.1%
1998	5,075,322	4,897,760	96.5
1999	5,706,023	6,498,808	113.9
2000	6,253,633	6,766,147	108.2
2001	6,118,836	6,166,844	100.8
2002	5,882,358	8,331,973	141.6
2003	5,371,297	5,371,378	100.0
2004	5,278,141	5,273,894	99.9
2005	5,200,428	5,267,589	101.3
2006*	4,277,242	4,247,586	99.3

* Unaudited

Source: City of Milpitas Comprehensive Annual Financial Report, June 30, 2005.

A list of the largest taxpayers, based on secured assessed valuations, within the City for FY 2004-05 are listed in Table 10. The total secured assessed valuation of these taxpayers represents approximately 16.95% of the total City assessed valuation for FY 2004-05.

Table 10
CITY OF MILPITAS
TEN LARGEST LOCAL SECURED TAXPAYERS

<u>Name</u>	<u>Net Assessed Property Valuation</u>	<u>Percent of Total</u>
Milpitas Mills Limited Partnership	\$274,123,789	2.90%
Richard T. Peery Trustee & Et. Al.....	188,618,732	2.00%
KLA Tencor Corporation.....	170,942,454	1.81%
Seagate Technology LLC.....	141,802,084	1.50%
Cisco Technology Inc.	121,344,300	1.28%
Trinet Milpitas Associates LLC.....	102,167,115	1.08%
Linear Technology Corporation.....	82,333,263	0.87%
Cisco Systems Inc.	75,832,970	0.80%
Shapell Industries Inc.....	54,765,416	0.58%
Prudential Insurance Company.	49,075,464	0.52%
Milpitas Housing Associates.....	47,266,164	0.50%
Limar Realty Corporation	43,417,649	0.46%
LSI Logic Corporation	41,815,951	0.44%
ABN AMRO Leasing Inc.....	39,430,500	0.42%
Milpitas Square 880 at 237 LLC.....	37,214,438	0.39%
Lucent Technologies Inc.	27,453,614	0.29%
ND Properties Inc.....	27,050,700	0.29%
Callahan Pentz Properties Buckeye Company.....	26,569,705	0.28%
Maxtor Corporation.....	25,558,676	0.27%
RFS SPE 2 1998 LLC	<u>24,554,893</u>	<u>0.26%</u>
Total assessed property valuation, local secured net	<u>\$1,601,337,877</u>	<u>16.95%</u>
 Total City of Milpitas net assessed property valuation	 <u>\$9,449,333,944</u>	

Source: City of Milpitas Comprehensive Annual Financial Report, June 30, 2005.

Public Utilities

Water is supplied by the City. Sewer service is also supplied by the City with treatment at the San José-Santa Clara Water Pollution Control Plant. Pacific Gas and Electric Company provides natural gas and electric power and AT & T provides telephone service.

Transportation

The Milpitas area is served by a system of freeways and expressways, including Interstate Highways 680 and 880, State Route 237 and the Montague Expressway. The Southern Pacific and Union Pacific Railroads provide freight rail service, the Bay Area Rapid Transit System (BART) provides passenger rail service out of Fremont to various cities in Alameda, Contra Costa and San Francisco Counties. Bus service is provided by Greyhound Bus Lines and the Santa Clara County Transit District. Approximately 65 interstate carriers and over 400 radial contract carriers service Milpitas. Overnight delivery is available to all major cities in California and Nevada. The Port of Redwood City, Port of Oakland and San Francisco Bay are all within 50 miles of the City. San Jose International Airport, Oakland International Airport and San Francisco International Airport are 10 minutes, 30 minutes and 50 minutes from the City respectively.

Community Facilities

There are 28 physicians/surgeons, 41 dentists, 5 optometrists and 4 chiropractors practicing in Milpitas. Nearby hospitals include Washington Hospital in Fremont and Alexian Brothers Hospital in San Jose. Educational facilities include 9 elementary schools, 2 junior high schools, a public high school and a private high school. Degree institutions in the area include Cal State Hayward University, University of Santa Clara in Santa Clara, Stanford University in Palo Alto and San Jose State University in San Jose. Financial institutions in the City include 9 banks and 3 savings and loans. Cultural facilities include 23 churches of various denominations, 7 libraries and 3 newspapers. There are 24 parks, 11 playgrounds, 1 theatre, and two 18-hole regulation golf courses in the City. Other recreational facilities include a roller skating rink, a miniature golf course, a bowling alley, 3 park and recreational facilities. There are five Santa Clara County Parks within driving distance.

Retirement System

The City allocates approximately 5% of retirement costs to the Sewer System.

PERS. The City contributes to the State of California Public Employees' Retirement System ("PERS"), an agent multiple-employer public employee retirement system that acts as a common investment and administrative agent for cities in the State. Actuarially required contributions for fiscal years 2003, 2004 and 2005 were \$1,751,787, \$3,405,511 and \$7,159,293, respectively. The City made these contributions as required.

All qualified permanent and probationary employees are eligible to participate in pension plans offered by PERS. PERS provides retirement and disability benefits, annual cost of living adjustments and death benefits to plan members, who must be public employees and beneficiaries. The City's employees participate in the separate Safety (police and fire) and Miscellaneous (all

other) Employee Plans. Benefit provisions under both plans are established by State statute and City resolution. Benefits are based on years of credited service, equal to one year of full time employment. Funding contributions for both Plans are determined annually on an actuarial basis as of June 30 by PERS; the City is required to contribute these amounts. The Plan's provisions and benefits in effect at June 30, 2005 are summarized below:

	<u>Safety</u>		
	Police	Fire	Miscellaneous
Benefit vesting schedule	5 years service	5 years service	5 years service
Benefit payment	Monthly for life	Monthly for life	Monthly for life
Retirement age	50	50	50
Monthly benefits, as % of salary	3%	3%	2.0% - 2.7%
Required employee contribution rates	9%	9%	8%
Required employer contribution rates	23.335%	26.092%	11.571%
Actuarially required contribution	\$2,407,256	\$2,643,795	\$2,108,242

PERS determines contribution requirements using a modification of the Entry Age Normal Method. Under this method, the City's total normal benefit cost for each employee from date of hire to date of retirement is expressed as a level percentage of the related payroll cost. Normal benefit cost under this method is the level amount the City must pay annually to fund an employees' projected retirement benefit. This level percentage of payroll method is used to amortize any unfunded actuarial liabilities. The actuarial assumptions used to compute contribution requirements are also used to compute the actuarial accrued liabilities. The City does not have a net pension obligation since it pays these actuarially required contributions annually.

PERs uses the market related value method for valuing the Plans' assets. An investment rate of return of 7.75% is assumed, including inflation at 3.00%. Annual salary increases are assumed to vary by duration of service. Changes in liability due to plan amendments, changes in actuarial assumptions, or changes in actuarial methods are amortized as a level percentage of payroll on a closed basis over twenty years. Investment gains and losses are accumulated as they are realized and ten percent of the net balance is amortized annually. The Plans' actuarial value (which differs from market value) and funding progress over the most recent three years available are set forth at their actuarial valuation date of June 30:

Safety Plan

<u>Actuarial</u>					Annual Covered payroll	Unfunded (overfunded) Liability as % of Payroll
Valuation Date	Value of Assets	Entry Age Accrued Liability	Unfunded (overfunded) Liability	Funded Ratio		
2001	\$102,948,588	\$102,553,782	(\$394,806)	100.4%	\$ 8,203,208	(4.813%)
2002	98,703,321	112,445,432	13,742,111	87.8	8,508,222	161.516
2003	102,624,141	122,040,990	19,416,849	84.1	17,862,170	108.704

Miscellaneous Plan

Actuarial						
Valuation Date	Value of Assets	Entry Age Accrued Liability	Unfunded (overfunded) Liability	Funded Ratio	Annual Covered payroll	Unfunded (overfunded) Liability as % of Payroll
2001	\$67,811,944	\$60,622,326	(\$7,189,618)	111.9%	\$18,947,083	(37.946%)
2002	64,819,733	67,156,651	2,336,918	96.5	20,459,866	11.422
2003	68,311,915	78,939,997	10,628,082	86.5	20,868,463	50.929

Source: City of Milpitas comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2005.

Public Agency Retirement System. Public sector employees who are not members of their employer's existing retirement system as of January 1, 1992 are required to be covered by either Social Security or an alternative plan. The City's part-time, seasonal and temporary employees are covered under the Public Agency Retirement System, which requires these employees to contribute 6% and the City to contribute 1.5% of the employee's pay plus administrative costs. The City's required contributions of \$19,098 and the employee's required contributions of \$76,389 were made during the fiscal year ending June 30, 2005.

Post-Retirement Benefits

In addition to providing pension benefits through PERS, the City provides postretirement healthcare benefits to employees who retire in good standing from the City after attaining the age of 50 and to certain employees who retire due to disability. The City pays up to 100% of the medical premiums for eligible employees on a pay-as-you-go basis. During fiscal year ended June 30, 2005, the City expended \$435,367 on benefits for 102 retirees.

The Governmental Accounting Standards Board has published Statement No. 45 which will require the City to account for post-employment benefits other than pension benefits beginning December 15, 2006. Statement No. 45 requires that the accrual basis measurement and recognition of the cost of postretirement healthcare benefits take place over a period that approximates the employee's years of service. Statement No. 45 also requires the periodic reporting of information about actuarial accrued liabilities associated with these benefits and whether and to what extent progress is being made in funding the plan.

In anticipation of, and in accordance with, Statement No. 45, the City engaged Nicolay Consulting Group, Oakland, California to conduct an actuarial study in 2005 to determine its liability with respect to post-employment medical and dental benefits. According to the report, the City's unfunded actuarial accrued liability (based on a 4.00% discount rate) as of July 1, 2005 is summarized as follows:

Active Employees	\$34,594,910
Retirees	<u>14,790,521</u>
Total	\$49,385,431

The actuarial study set forth a five-year projection of the City's obligation, which is summarized below:

	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Unfunded Actuarial Liability	\$49,385,432	\$52,813,118	\$56,115,930	\$59,448,650	\$62,672,421
Annual Required Contribution	4,925,274	5,210,967	5,493,529	5,781,994	6,067,585
Estimated pay-as-you-go expense	593,310	681,297	774,942	876,367	982,969
Estimated Annual Payroll	39,374,000	40,161,000	41,366,000	42,607,000	43,885,000
Pay-as-you-go Expense as % of Payroll	1.5%	1.7%	1.9%	2.1%	2.2%

The calculation above assumes that if the City only contributes the pay-as-you go cost as opposed to the annual required contribution, the net difference for that year will be added to the unfunded actuarial liability in the following year, further increasing the annual required contribution. At June 30, 2006, the City has set aside approximately \$4.1 million in the General Fund for retiree medical benefits. The City intends to set up an irrevocable trust for this purpose in fiscal year 2006-07 and to begin funding annually to reduce the unfunded actuarial liability.

Labor Relations

In accordance with the Meyers-Milias-Brown Act, the City has adopted an Ordinance which establishes the procedures for the administration of employer-employee relations. This includes the procedure by which the City meets and confers with representatives of recognized employee organizations (i.e. unions and associations) regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment within the appropriate unit.

Certain City employees are represented by six unions. The unions, number of employees represented by each union, and the expiration date of the union contract are shown below.

	<u>No. of Employees</u>	<u>Contract Expires</u>
International Association of Firefighters		06/30/05
LIUNA Mid-Mgmt/Confidential Unit		12/31/05
Milpitas Employees Association		12/31/06
Milpitas Supervisors Association		12/31/06
Milpitas Police Officers Association		12/31/07
Milpitas Professional and Technical Group		06/30/05

Contracts which have expired are still under negotiation. Most of the employees employed by the Sewer Enterprise are represented by the Milpitas Employees Association; however, because the Sewer System is responsible for paying a share of the City's expenses that are allocable to the Sewer System (approximately 5% of total City costs), the Sewer can be impacted by the other labor contracts also.

City Investments

The City invests its funds, including funds of the Sewer Enterprise, in accordance with the City's Investment Policy, which is subject to annual review and approval by the City Council. The purpose of the Investment Policy is to establish the investment objectives of safety, liquidity, and yield. The City's Investment Policy complies with the provisions of the California government Code, Sections 53600 through 53659 (the authority governing investments for municipal governments in the State). The City Treasurer provides quarterly investment reports to the City Manager and City Council, however, the City Manager may, at his discretion, require this reporting on a monthly basis based upon market conditions.

The Investment Policy limits the City to investments authorized by State law. In addition, the Investment Policy establishes further guidelines. Monthly reports are made to the City Council and the City Manager.

According to the City Treasurer's most recent report for the quarter ended September 30, 2006, the City has invested funds as set forth in the table below. As of August 31, 2006, excluding the cash market value of the City's investment portfolio (\$_____) was ____% of the investment portfolio's book value (\$_____). The weighted average annual yield of the portfolio as of August 31, 2006 was ____%. The City's practice is to hold most securities to maturity.

**CITY OF MILPITAS
Investment Portfolio Summary
(as of August 31, 2006)**

<u>Type of Investment</u>	<u>Book Value</u>	<u>Market Value</u>	<u>Percent of Total</u>
Total			

Source: City of Milpitas.

APPENDIX C
CITY COMPREHENSIVE ANNUAL FINANCIAL REPORT

APPENDIX D
PROPOSED FORM OF FINAL OPINION

APPENDIX E

FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this “**Disclosure Certificate**”) is executed and delivered by the City of Milpitas (the “City”) in connection with the execution and delivery of \$_____ aggregate principal amount of Certificate of Participation, 2006 Series A (City of Milpitas Sewer Financing) (the “**Certificates**”). The Certificates evidence the direct, undivided fractional interests of the owners thereof in installment payments to be made by the City under an Installment Sale Agreement dated as of November 1, 2006 (the “**Installment Sale Agreement**”) between the Milpitas Public Financing Authority (the “**Authority**”) as seller and the City as purchaser. The Certificates will be delivered under and subject to the terms and provisions of a Trust Agreement dated as of November 1, 2006 (the “**Trust Agreement**”) among the City, the Authority and U.S. Bank National Association, as trustee (the “**Trustee**”). The City covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Certificates and in order to assist the Participating Underwriters in complying with Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

Section 2. Definitions. In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“*CPO*” means the Internet-based filing system currently located at www.DisclosureUSA.org, or such other similar filing system approved by the Securities and Exchange Commission.

“*Dissemination Agent*” means U.S. Bank National Association, the City or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“*Listed Events*” means any of the events listed in Section 5(a) of this Disclosure Certificate.

“*National Repository*” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule.

“*Participating Underwriter*” means any of the original underwriters of the Certificates required to comply with the Rule in connection with offering of the Certificates.

“*Repository*” means each National Repository and each State Repository.

“Rule” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State Repository” means any public or private repository or entity designated by the State of California as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Certificate, there is no State Repository.

Section 3. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than nine months after the end of the City’s fiscal year (which currently would be March 31, commencing March 31, 2007 with the report for the 2005-06 fiscal year, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate (provided, however, that the first Annual Report shall consist of the Official Statement for the Certificates and the City’s 2005-06 audited financial statements). Not later than 15 Business Days prior to said date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the date required above for the filing of the Annual Report if not available by that date. If the City’s fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c).

(b) If the City is unable to provide to the Repositories an Annual Report by the date required in subsection (a), the City shall send a notice to (i) each National Repository or the Municipal Securities Rulemaking Board and (ii) the appropriate State Repository, if any, in substantially the form attached as Exhibit A. In lieu of filing the notice with each Repository, the City or the Dissemination Agent may file such notice with the CPO.

(c) With respect to the Annual Reports, the Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and each State Repository, if any; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided and listing all the Repositories to which it was provided.

(d) In lieu of filing the Annual Report with each Repository in accordance with the preceding paragraph (c), the City or the Dissemination Agent may file such Annual Report solely with the CPO.

Section 4. Content of Annual Reports. The City's Annual Report shall contain or incorporate by reference the following:

(a) Audited Financial Statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) To the extent not contained in the audited financial statements filed pursuant to the preceding clause (a), the Annual Report shall contain information showing the following:

(i) a schedule of sewer rates in effect as of the close of the preceding fiscal year, by classification of customer;

(ii) The Sewer System's revenues and expenses for the most recently-completed fiscal year in the form of Table 9 in the Official Statement;

(iii) total Net Revenues received by the City during the preceding fiscal year and the amount by which such Net Revenues provide coverage for the payments of debt service coming due in such fiscal year with respect to the Installment Payments and any other Parity Debt, in substantially the form of Table No.10 in the Official Statement; and

(iv) a description of any additional indebtedness incurred during the most recently-completed fiscal year which is payable from Net Revenues on a parity with the Installment Payments.

(c) In addition to any of the information expressly required to be provided under paragraphs (a) and (b) of this Section, the City shall provide such further information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which have been submitted to each of the Repositories or the Securities and Exchange Commission. If the

document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The City shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Certificates, if material:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions or events affecting the tax-exempt status of the security.
- (7) Modifications to rights of security holders.
- (8) Contingent or unscheduled bond calls.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities.
- (11) Rating changes.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, the City shall as soon as possible determine if such event would be material under applicable Federal securities law.

(c) If the City determines that knowledge of the occurrence of a Listed Event would be material under applicable Federal securities law, the City shall promptly file a notice of such occurrence with (i) each National Repository or the Municipal Securities Rulemaking Board and (ii) each State Repository. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Certificates pursuant to the Trust Agreement.

In lieu of filing the notice of Listed Event with each Repository in accordance with the preceding paragraph, the City or the Dissemination Agent may file such notice of a Listed Event with the CPO.

Section 6. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Certificates. If such termination occurs prior to the final maturity of the Certificates, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 7. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

- (a) if the amendment or waiver relates to the provisions of Sections 3(a), 4 or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Certificates, or type of business conducted;
- (b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Certificates, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and
- (c) the proposed amendment or waiver either (i) is approved by holders of the Certificates in the manner provided in the Trust Agreement for amendments to the Trust Agreement with the consent of holders, or (ii) does not, in the opinion of the Trustee or nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Certificates.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be sent to the Repositories in the same manner as for a Listed Event under Section 5(c).

Section 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 10. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate any holder or beneficial owner of the Certificates may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Trust Agreement, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 11. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Certificates.

Section 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriters and holders and beneficial owners from time to time of the Certificates, and shall create no rights in any other person or entity.

Date: [Closing Date]

CITY OF MILPITAS

By _____
City Manager

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: City of Milpitas

Name of Issue: \$_____ Certificate of Participation, 2006 Series A
(City of Milpitas Sewer Financing)

Date of Issuance: November __, 2006

NOTICE IS HEREBY GIVEN that the City of Milpitas (the "City") has not provided an Annual Report with respect to the above-named Certificates as required by Section 9.05 of the Trust Agreement dated as of November 1, 2006 among the Milpitas Public Financing Authority, the City and U.S. Bank National Association, as trustee. The City anticipates that the Annual Report will be filed by _____.

Dated: _____

CITY OF MILPITAS

By _____
Name:
Title:

APPENDIX F

BOOK ENTRY PROVISIONS

The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the Certificates, payment of principal, interest and other payments on the Certificates to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Certificates and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

Neither the issuer of the Certificates (the “Issuer”) nor the trustee, fiscal agent or paying agent appointed with respect to the Certificates (the “Agent”) take any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Certificates, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Certificates, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Certificates, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current "Rules" applicable to DTC are on file with the Securities and Exchange Commission and the current "Procedures" of DTC to be followed in dealing with DTC Participants are on file with DTC.

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Certificates”). The Certificates will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for the Certificates, in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2.2 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instrument from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited

securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation, and Emerging Markets Clearing Corporation (NSCC, FICC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org.

3. Purchases of Certificates under the DTC system must be made by or through Direct Participants, which will receive a credit for the Certificates on DTC's records. The ownership interest of each actual purchaser of each Certificate ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Certificates are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Certificates, except in the event that use of the book-entry system for the Certificates is discontinued.

4. To facilitate subsequent transfers, all Certificates deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Certificates with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Certificates; DTC's records reflect only the identity of the Direct Participants to whose accounts such Certificates are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Certificates may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Certificates, such as redemptions, tenders, defaults, and proposed amendments to the security documents. For example, Beneficial Owners of Certificates may

wish to ascertain that the nominee holding the Certificates for their benefit has agreed to obtain and transmit notices to Beneficial Owners, in the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Certificates within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to the Certificates unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Certificates are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and interest payments on the Certificates will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from Issuer or Agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as securities depository with respect to the Certificates at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor securities depository is not obtained, security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

APPENDIX G

SPECIMEN FINANCIAL GUARANTY INSURANCE POLICY

TRUST AGREEMENT

Dated as of November 1, 2006

among

**U.S. BANK NATIONAL ASSOCIATION
as Trustee**

MILPITAS PUBLIC FINANCING AUTHORITY,

and the

CITY OF MILPITAS

Relating to

**\$ _____
Certificates of Participation
2006 Series A
(City of Milpitas Sewer Financing)**

TABLE OF CONTENTS

Page

ARTICLE I

Definitions

Section 1.01.....	Definitions	2
Section 1.02.....	Authorization	2
Section 1.03.....	Interpretation	2

ARTICLE II

The Certificates of Participation

The Certificates of Participation							
Section 2.01.						Authorization	3
Section 2.02.						Date	3
Section 2.03. Terms	of					Certificates	3
Section 2.04. Fully	Registered		Form;		Interest		3
Section 2.05. Book	Entry					System	4
Section 2.06. Form	and	Execution		of	Certificates		6
Section 2.07. Transfer	and					Exchange	6
Section 2.08. Certificates	Mutilated,	Lost,	Destroyed	or	Stolen		6
Section 2.09.						Payment	7
Section 2.10. Execution	of	Documents	and	Proof	of	Ownership	7
Section 2.11. Registration						Books	8

ARTICLE III

Disposition of Proceeds; Project Fund; Costs of Issuance Fund and Reserve Fund

Disposition of Proceeds, Project Fund, Costs of Issuance Fund and Reserve Fund				
Section 3.01. Application		of		Proceeds
				9
Section 3.02. Costs		of	Issuance	Fund
				9
Section 3.03. Project				Fund
				9
Section 3.04. Reserve				Fund
				10
Section 3.05. Qualified	Reserve	Fund	Credit	Instrument
				10

ARTICLE IV

Prepayment of Certificates

Section 4.01.	Prepayment	12
Section 4.02. Selection of Certificates for	Prepayment	13
Section 4.03. Notice of	Prepayment	13
Section 4.04. Partial Prepayment of	Certificates	13
Section 4.05. Effect of Notice of	Prepayment	13
Section 4.06. Purchase of	Certificates	14

ARTICLE V

Installment Payments; Installment Payment Fund

Section 5.01. Assignment of Rights in Installment Sale Agreement	15
Section 5.02. Establishment of Installment Payment Fund	15
Section 5.03. Application of Moneys	15
Section 5.04.	Surplus 15

ARTICLE VI

Moneys in Funds; Investment

Section 6.01. Held in Trust	16
Section 6.02. Investments Authorized	16
Section 6.03.	Accounting 16
Section 6.04. Allocation of Earnings	16
Section 6.05. Valuation and Disposition of Investments	17

ARTICLE VII

The Trustee

Section 7.01. Appointment of Trustee	18
Section 7.02. Acceptance of Trusts	18
Section 7.03. Fees, Charges and Expenses of Trustee	21
Section 7.04. Notice to Certificate Insurer and Certificate Owners of Default	21
Section 7.05. Removal of Trustee	21
Section 7.06. Resignation by Trustee	21

Section 7.07. Appointment	of	Successor	Trustee	21
Section 7.08. Merger	or		Consolidation	22
Section 7.09. Concerning	any	Successor	Trustee	22
Section 7.10. Non-Liability	of		Trustee	22
Section 7.11. Nature	of	Trust	Engagement	23
Section 7.12. Certificate	Insurer's	Exercise of Rights	Relating to the Trustee	23

ARTICLE VIII

Modification or Amendment of Agreements

Section 8.01. Amendments	Permitted	Without	Consent	of	Owners	24
Section 8.02. Amendments	Permitted	With	Consent	of	Owners	24
Section 8.03. Effect	of	Supplemental			Agreement	25
Section 8.04. Endorsement or Replacement of Certificates	Delivered After Amendments					25
Section 8.05. Amendatory	Endorsement		of		Certificates	26

ARTICLE IX

Other Covenants

Section 9.01. Compliance	With and Enforcement of	Installment Sale Agreement	27
Section 9.02. Observance	of	Laws and Regulations	27
Section 9.03. Recordation		and Filing	27
Section 9.04. Tax		Covenants	27
Section 9.05. Continuing		Disclosure	28
Section 9.06. Rights	Under	Certificate Insurance Policy	29
Section 9.07. Further		Assurances	29

ARTICLE X

Limitation of Liability

Section 10.01. Limited	Liability	of	City	and	Authority	30
Section 10.02. No	Liability	for	Trustee		Performance	30
Section 10.03. Indemnification	of	Authority		and	Trustee	30

Section 10.04. Opinion	of	Counsel	31
Section 10.05. Limitation of Rights to Parties and Certificate Owners			31

ARTICLE XI

Events of Default and Remedies of Certificate Owners

Section 11.01. Assignment	of	Rights	32
Section 11.02.		Remedies	32
Section 11.03. Application	of	Funds	32
Section 11.04. Institution	of	Legal Proceedings	33
Section 11.05.		Non-waiver	33
Section 11.06. Remedies	Not	Exclusive	33
Section 11.07. Power	of	Trustee to Control Proceedings	33
Section 11.08. Limitation	on	Certificate Owners' Right to Sue	33
Section 11.09. Rights	of	the Certificate Insurer	34

ARTICLE XII

Miscellaneous

Section 12.01. Discharge	of	this Trust Agreement	35
Section 12.02.		Notices	35
Section 12.03.		Records	36
Section 12.04. Disqualified		Certificates	36
Section 12.05. Payment	of	Certificates After Discharge	36
Section 12.06. Governing		Law	37
Section 12.07. Binding Effect; Successors; Benefits Limited to Parties			37
Section 12.08. Third-Party		Beneficiary	37
Section 12.09. Execution	in	Counterparts	37
Section 12.10. Delivery	of	Cancelled Certificates	37
Section 12.11. Authority	and	City Representatives	37

Section 12.12.	Headings	38
Section 12.13. Waiver	of	Notice
Section 12.14. Severability	of	Invalid Provisions
		38
APPENDIX		A
Definitions		
APPENDIX B		Form of
Certificate of Participation		

TRUST AGREEMENT

This TRUST AGREEMENT, made and entered into as of November 1, 2006, is among U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee"), the MILPITAS PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), and the CITY OF MILPITAS, a general law city and municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the "City").

B A C K G R O U N D :

1. The City presently owns and operates facilities and property for the collection of sewage within the service area of the City (the "Sewer System"), and the City wishes to provide funds at this time to finance certain improvements (the "Project") to the Sewer System as described in Exhibit B to Installment Sale Agreement (as defined below).

2. The Authority has been formed for the purpose of assisting the City in the financing of facilities and property useful to the City, and the Authority has entered into an Installment Sale Agreement dated as of November 1, 2006, with the City under which the Authority has agreed to acquire and construct the Project and sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").

3. For the purpose of obtaining the moneys required to finance the Project in accordance with the terms hereof and of the Installment Sale Agreement, the Authority wishes to assign and transfer certain of its rights under the Installment Sale Agreement to the Trustee, and at the written direction of the Authority the Trustee will execute and deliver Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) in the aggregate principal amount of \$_____, evidencing direct, undivided fractional interests in the Installment Payments.

4. The payment of principal and interest represented by the Certificates is insured by a municipal bond insurance policy issued by _____ (the "Certificate Insurer").

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City, the Authority and the Trustee formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Trust Agreement have the respective meanings specified in that Appendix when used in this Trust Agreement.

SECTION 1.02. Authorization. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. Interpretation.

- (a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.
- (b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.
- (c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE CERTIFICATES OF PARTICIPATION

SECTION 2.01. Authorization. The Trustee is hereby authorized and directed upon written request from the Authority to register, execute and deliver, to the Original Purchaser, Certificates in an aggregate principal amount of \$_____, which represent the direct, undivided fractional ownership interests of the Owners thereof in the Installment Payments.

SECTION 2.02. Date. Each Certificate will be dated as of the Closing Date. Interest represented by a Certificate is payable from the Interest Payment Date next preceding the date of execution thereof, unless:

- (a) it is executed after a Record Date and on or before the following Interest Payment Date, in which event interest represented thereby is payable from such Interest Payment Date; or
- (b) it is executed on or before the first Record Date, in which event interest represented thereby is payable from the Closing Date; or
- (c) interest represented by such Certificate is in default as of the date of its execution, in which event interest represented thereby is payable from the Interest Payment Date to which interest represented thereby has previously been paid or made available for payment.

SECTION 2.03. Terms of Certificates. Principal represented by the Certificates is payable on November 1 in each of the respective years and in the respective amounts, and interest represented thereby will be computed at the respective rates, as follows:

Maturity Date (Nov. 1)	Principal Amount	Interest Rate	Maturity Date (Nov. 1)	Principal Amount	Interest Rate
2007			2019		
2008			2020		
2009			2021		
2010			2022		
2011			2023		
2012			2024		
2013			2025		
2014			2026		
2015			2027		
2016					
2017					
2018					

SECTION 2.04. Fully Registered Form; Interest. The Certificates will be delivered in the form of fully registered Certificates without coupons in the authorized denominations of \$5,000 or any

integral multiple thereof, except that no Certificate shall represent principal payable in more than one year. The Certificates will be assigned such alphabetical and numerical designation as the Trustee deems appropriate.

Interest represented by the Certificates is payable on each Interest Payment Date to and including the date of maturity or prepayment, whichever is earlier, as provided in Section 2.09. Said interest shall represent the portion of Installment Payments designated as interest and coming due on each of the respective Interest Payment Dates. The share of the portion of Installment Payments designated as interest with respect to any Certificate will be computed by multiplying the portion of Installment Payments designated as principal represented by such Certificate by the rate of interest represented by such Certificate (on the basis of a 360-day year of twelve 30-day months).

SECTION 2.05. Book Entry System.

(a) Original Delivery. The Certificates will be initially delivered in the form of a separate single fully registered Certificate (which may be typewritten) for each maturity of the Certificates. Upon initial delivery, the ownership of each such Certificate will be registered on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Certificates will be registered in the name of the Nominee on the Registration Books.

With respect to Certificates the ownership of which is registered in the name of the Nominee, the City and the Trustee have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the City holds an interest in the Certificates. Without limiting the generality of the immediately preceding sentence, the City and the Trustee have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Certificates, (ii) the delivery to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any notice with respect to the Certificates, including any notice of prepayment, (iii) the selection by the Depository of the beneficial interests in the Certificates to be prepaid in the event the City elects to prepay the Certificates in part, (iv) the payment to any Depository System Participant or any other person, other than a Certificate Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest represented by the Certificates or (v) any consent given or other action taken by the Depository as Owner of the Certificates. The City and the Trustee may treat and consider the person in whose name each Certificate is registered as the absolute owner of such Certificate for the purpose of payment of principal, premium, if any, and interest represented by such Certificate, for the purpose of giving notices of prepayment and other matters with respect to such Certificate, for the purpose of registering transfers of ownership of such Certificate, and for all other purposes whatsoever. The Trustee will pay the principal, interest and premium, if any, represented by the Certificates only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments will be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal, interest and premium, if any, represented by the Certificates to the extent of the sum or sums so paid. No person other than a Certificate Owner will receive a Certificate evidencing the

obligation of the City to make payments of principal, interest and premium, if any, under this Trust Agreement. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, such new nominee will become the Nominee hereunder for all purposes; and upon receipt of such a notice the City will promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Certificates for the Depository's book-entry system, the City and the Trustee will execute and deliver to such Depository a letter representing such matters as necessary to so qualify the Certificates. The execution and delivery of such letter does not limit the provisions of subsection (a) above or impose on the City or the Trustee any obligation whatsoever with respect to persons having interests in the Certificates other than the Certificate Owners. Upon the written acceptance by the Trustee, the Trustee will agree to take all action reasonably necessary for all representations of the City in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the City may take any other actions, not inconsistent with this Trust Agreement, to qualify the Certificates for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Certificates, or (ii) the City determines to terminate the Depository as such, then the City shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository will cooperate with the City and the Trustee in the delivery of replacement Certificates by providing the Trustee with a list showing the interests of the Depository System Participants in the Certificates, and by surrendering the Certificates, registered in the name of the Nominee, to the Trustee on or before the date such replacement Certificates are to be issued. The Depository, by accepting delivery of the Certificates, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the City fails to identify another Securities Depository to replace the Depository, then the Certificates will no longer be required to be registered in the Registration Books in the name of the Nominee, but will be registered in whatever name or names the Owners transferring or exchanging Certificates shall designate, in accordance with the provisions hereof.

If the City determines that it is in the best interests of the beneficial owners of the Certificates that they be able to obtain certificated Certificates, the City may notify the Depository System Participants of the availability of such certificated Certificates through the Depository. In that event, the Trustee will execute, transfer and exchange Certificates as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the City shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Certificates to any Depository System Participant having Certificates credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Certificates, all at the City's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Trust Agreement to the contrary, so long as any Certificate is registered in the name of the Nominee, all payments with respect to principal, interest and premium, if any, represented by such Certificate and all

notices with respect to such Certificate will be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.06. Form and Execution of Certificates. The Certificates will be delivered substantially in the form set forth in Appendix B attached hereto, and will be executed by and in the name of the Trustee by the manual signature of an authorized signatory of the Trustee. If any person whose signature appears on any Certificate ceases to be an authorized signatory before the date of delivery of said Certificate, such signature shall nevertheless be as effective as if such person had remained an authorized signatory until such date.

SECTION 2.07. Transfer and Exchange.

(a) Transfer of Certificates. The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by a duly authorized attorney, upon surrender of such Certificate for cancellation at the Trust Office of the Trustee, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. Whenever any Certificate or Certificates is surrendered for registration of transfer, the Trustee will execute and deliver a new Certificate or Certificates representing the same maturity, interest rate and aggregate principal amount, in any authorized denominations. The City will pay all costs of the Trustee incurred in connection with any such transfer, except that the Trustee may require the payment by the Certificate Owner of any tax or other governmental charge required to be paid with respect to such transfer.

(b) Exchange of Certificates. Certificates may be exchanged at the Trust Office of the Trustee, for a like aggregate principal amount of Certificates representing other authorized denominations of the same interest rate and maturity. The City will pay all costs of the Trustee incurred in connection with any such exchange, except that the Trustee may require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

(c) Limitations on Transfer or Exchange. The Trustee may refuse to transfer or exchange either (i) any Certificate during the period established by the Trustee for the selection of Certificates for prepayment, or (ii) the portion of any Certificate which the Trustee has selected for prepayment under the provisions of Section 4.02.

SECTION 2.08. Certificates Mutilated, Lost, Destroyed or Stolen. If any Certificate is mutilated, the Trustee, at the expense of the Owner of such Certificate, will execute and deliver a new Certificate of like principal amount, interest rate and maturity in replacement for the Certificate so mutilated, on surrender to the Trustee of the Certificate so mutilated. The Trustee will cancel and destroy every mutilated Certificate surrendered to it and, upon request of the City, will deliver a certificate of destruction to the City. If any Certificate is lost, destroyed or stolen, evidence of such loss, destruction or theft must be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and the City and if an indemnity is given satisfactory to the Trustee and the City, the Trustee, at the expense of the Certificate Owner, will execute and deliver a new Certificate of like principal amount, interest rate and maturity and numbered as the Trustee shall determine in lieu of and in replacement for the Certificate so lost, destroyed or

stolen. The Trustee may require payment of an appropriate fee for each replacement Certificate delivered under this Section 2.08 and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.08. Any Certificate delivered under the provisions of this Section 2.08 in lieu of any Certificate alleged to be lost, destroyed or stolen is equally entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee is not required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate will be treated as one and the same. Notwithstanding any other provision of this Section 2.08, in lieu of delivering a replacement for a Certificate which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Certificate upon receipt of indemnity satisfactory to the Trustee and the City.

SECTION 2.09. Payment. The Trustee will pay interest represented by any Certificate on any Interest Payment Date to the person appearing on the Registration Books as the Owner thereof as of the close of business on the Record Date immediately preceding such Interest Payment Date, by check mailed to such Owner by first class mail postage prepaid at such Owner's address as it appears on the Registration Books. However, at the written request of the Owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of the Record Date preceding any Interest Payment Date, the Trustee will pay interest represented by such Certificates coming due on such Interest Payment Date by wire transfer in immediately available funds to such account in the United States as specified in such written request. The principal and prepayment price represented by any Certificate at maturity or upon prior prepayment is payable in lawful money of the United States of America upon surrender of such Certificate at the Trust Office of the Trustee.

SECTION 2.10. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

- (a) The fact and date of the execution by any Owner, attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. If any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate also constitutes sufficient proof of authority.

(b) The fact of the ownership of Certificates by any person and the amount, the maturity and the numbers of such Certificates and the date of holding the same is proved by the Registration Books.

Nothing contained in this Section 2.10 limits the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any Certificate binds every future Owner of the same Certificate in respect of anything done or suffered to be done by the Trustee under such request or consent.

SECTION 2.11. Registration Books. The Trustee will keep or cause to be kept sufficient records for the registration and registration of transfer of the Certificates, which shall at all reasonable times upon prior notice be open to inspection by the City, the Authority and the Certificate Insurer during regular business hours; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Certificates as hereinbefore provided.

ARTICLE III

DISPOSITION OF PROCEEDS; PROJECT FUND; COSTS OF ISSUANCE FUND AND RESERVE FUND

SECTION 3.01. Application of Proceeds. On the Closing Date, the Trustee shall deposit the proceeds received from the sale of the Certificates to the Original Purchaser as follows:

(a) The Trustee will deposit the amount of \$_____ in the Reserve Fund, constituting the full amount of the Reserve Requirement.

(b) The Trustee will deposit the amount of \$_____ in the Costs of Issuance Fund.

(c) The Trustee will transfer the amount of \$_____, constituting the remainder of such proceeds, to the City for deposit in the Project Fund. Including the \$_____ good faith deposit received by the City upon the sale of the Certificates, the balance in the Project Fund held by the City on the Closing Date will equal \$_____.

SECTION 3.02. Costs of Issuance Fund. The Trustee shall establish and maintain a special fund designated as the "Costs of Issuance Fund" to be held by the Trustee in trust for the benefit of the City and the Owners of the Certificates, and applied solely as provided herein. The Trustee shall disburse amounts in the Costs of Issuance Fund to pay Costs of Issuance from time to time upon the receipt of a written requisition of the City which states (i) the amounts to be disbursed for payment or reimbursement of Costs of Issuance, (ii) the name and address of the person or persons to whom said amounts are to be disbursed, and (iii) that all amounts to be disbursed are for Costs of Issuance properly chargeable to the Costs of Issuance Fund. The Trustee shall withdraw any funds remaining in the Costs of Issuance Fund on May 1, 2007, and transfer those funds to the Project Fund.

SECTION 3.03. Project Fund. The City shall establish and maintain a separate fund to be known as the "Project Fund". The City shall disburse moneys in the Project Fund from time to time to pay Project Costs (or to reimburse itself for payment of Project Costs). The City shall maintain accurate records showing the timing, the amount and the payee relating to all disbursements from the Project Fund.

Upon completion of the Project, the City will withdraw all amounts on deposit in the Project Fund and transfer such amounts to the Trustee for deposit in the Installment Payment Fund, other than reasonable retainage amounts estimated by the City to be required to pay Project Costs. At such time that no further amounts are intended to be requisitioned from the Project Fund, the City will thereupon close the Project Fund and transfer all remaining amounts therein to the Trustee for deposit into the Installment Payment Fund. The City may also apply all or a portion of the amounts so transferred from the Project Fund to the Installment Payment Fund to the prepayment of Installment Payments under Section 7.2 of the Installment Sale Agreement and the corresponding redemption of the Certificates under Section 4.01(a) hereof.

SECTION 3.04. Reserve Fund. The Trustee shall establish and maintain a special fund designated as the "Reserve Fund" to be held by the Trustee in trust. The Trustee shall deposit an amount equal to the Reserve Requirement in the Reserve Fund on the Closing Date under Section 3.01(a). Moneys in the Reserve Fund will be held in trust as a reserve for the payment when due of the Installment Payments and any Parity Debt on behalf of the City. Semiannually on or prior to each Installment Payment Date, the Trustee shall transfer any moneys in the Reserve Fund in excess of the Reserve Requirement to the Installment Payment Fund to be credited towards the Installment Payment coming due and payable on such Installment Payment Date.

If on any Interest Payment Date the moneys available in the Installment Payment Fund are not at least equal to the amount of the Installment Payment then coming due and payable, the Trustee shall apply the moneys available in the Reserve Fund to make such payments on behalf of the City by transferring the amount necessary for this purpose to the Installment Payment Fund. If on any Interest Payment Date the moneys on deposit in the Reserve Fund and the Installment Payment Fund (excluding amounts required for payment of principal, interest and prepayment premium, if any, represented by any Certificates theretofore having come due but not presented for payment) are sufficient to pay all Outstanding Certificates, including all principal, interest and prepayment premiums (if any), the Trustee shall, upon the written request of the City, transfer all amounts then on deposit in the Reserve Fund to the Installment Payment Fund to be applied for such purpose to the payment of the Installment Payments on behalf of the City. Upon the discharge of this Trust Agreement under Section 12.01, the Trustee shall withdraw all amounts in the Reserve Fund and, at the written request of the City, apply those amounts towards such discharge or pay them to the City.

The Reserve Fund, and the respective reserve funds established for any Parity Debt, shall be held by the Trustee in trust to secure the payment by the City when due of the Installment Payments and any Parity Debt. If the amounts held in the Reserve Fund and in the respective reserve funds established for any Parity Debt are insufficient to provide for the payment in full of the Installment Payments and any Parity Debt on any date when due, amounts on deposit in the Reserve Fund and all such other reserve funds shall be applied on a pro rata basis to make up such insufficiency.

SECTION 3.05. Qualified Reserve Fund Credit Instrument. With the written consent of the Certificate Insurer and with prior notification to each Rating Agency, the City may at any time release funds from the Reserve Fund, in whole or in part, by tendering to the Trustee: (a) a Qualified Reserve Fund Credit Instrument, and (b) an opinion of Bond Counsel stating that such release will not, of itself, cause interest represented by the Certificates to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Trustee, the Trustee will transfer such funds from the Reserve Fund to the City for deposit into a separate account to be held by the City and expended to finance improvements to the Sewer System in accordance with applicable state and federal law. Upon the expiration of any Qualified Reserve Fund Credit Instrument, the City will either (a) replace such Qualified Reserve Fund Credit Instrument with a new Qualified Reserve Fund Credit Instrument, or (b) deposit with the Trustee

an amount of funds equal to the Reserve Requirement, to be derived from any source of legally available funds of the City.

ARTICLE IV

PREPAYMENT OF CERTIFICATES

SECTION 4.01. Prepayment.

(a) Optional Prepayment. The Certificates maturing on or before November 1, 2016, are not subject to optional prepayment prior to the respective stated maturities. The Certificates maturing on or after November 1, 2017, are subject to optional prepayment in whole on any date on or after November 1, 2016, or in part, from prepayments of the Installment Payments made at the option of the City under Section 7.2 of the Installment Sale Agreement. Certificates are subject to prepayment under this subsection at a prepayment price (expressed as percentages of the principal amount of Certificates or portions thereof to be prepaid) set forth in the following table, in each case with accrued interest represented thereby to the prepayment date:

<u>Prepayment Dates</u>	<u>Prepayment Price</u>
November 1, 2016 through October 31, 2017	101%
November 1, 2017 and thereafter	100

If the City prepays the Certificates in part but not in whole, the Trustee will select the Certificates for prepayment among maturities on such basis as the City designates in written notice to the Trustee, and by lot within a maturity.

(b) Mandatory Sinking Fund Prepayment. The Term Certificates are subject to mandatory sinking fund prepayment on November 1 in each of the years as set forth in the following table, from the principal components of the Installment Payments required to be paid by the City under the Installment Sale Agreement with respect to each such prepayment date, at a prepayment price equal to the principal amount thereof to be prepaid, without premium, together with accrued interest represented thereby to the date fixed for prepayment, as follows:

Term Certificates Maturing November 1, 20__

<u>Prepayment Date</u> <u>(November 1)</u>	<u>Principal Amount of</u> <u>Term Certificates to be Prepaid</u>
---	--

Term Certificates Maturing November 1, 20__

<u>Prepayment Date</u> <u>(November 1)</u>	<u>Principal Amount of</u> <u>Term Certificates to be Prepaid</u>
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Notwithstanding the foregoing provisions of this subsection (b), if some but not all of the Term Certificates of any maturity have been prepaid under any of the preceding provisions of this

Section 4.01, the aggregate principal amount of such Term Certificates to be prepaid in each year thereafter under this subsection (b) will be reduced by the aggregate principal amount of such Term Certificates so prepaid, to be allocated among maturities in integral multiples of \$5,000 such that the resulting amount of principal represented by the Term Certificates subject to prepayment on any date under this subsection (b) is not less than the aggregate principal components of the Installment Payments coming due and payable on such date.

SECTION 4.02. Selection of Certificates for Prepayment. Whenever less than all Outstanding Certificates of any one maturity are called for prepayment, the Trustee will select Certificates for prepayment within such maturity by lot in any manner deemed fair by the Trustee. For the purposes of such selection, Certificates will be deemed to be composed of \$5,000 portions, and any such portion may be separately prepaid. The Trustee shall promptly notify the City and the Authority in writing of the Certificates or portions thereof so selected for prepayment. The selection by the Trustee of any Certificates for prepayment is final and conclusive.

SECTION 4.03. Notice of Prepayment. The Trustee shall give notice of the prepayment of the Certificates on behalf and at the expense of the City. Such notice must state the prepayment date and prepayment price and, if less than all of the then Outstanding Certificates of any maturity are to be called for prepayment, must designate the numbers of the Certificates to be prepaid, and must require that such Certificates be surrendered on the designated prepayment date at the Trust Office of the Trustee for prepayment, giving notice also that further interest represented by the Certificates will not accrue from and after the prepayment date. Such notice must further state that on the specified date there will become due and payable upon each Certificate, the principal and premium, if any, together with interest accrued to said date, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

The Trustee shall mail prepayment notice mailed by first class mail with postage prepaid, to (a) one or more of the Information Services, (b) the Certificate Insurer, and (c) the Owners of Certificates designated for prepayment at their respective addresses appearing on the Registration Books. The Trustee shall mail such notice at least 30 days but not more than 60 days prior to the prepayment date. Neither the failure to receive any notice so mailed nor any defect in any notice so mailed affects the sufficiency of the proceedings for the prepayment of such Certificates or the cessation of accrual of interest represented thereby from and after the date fixed for prepayment.

SECTION 4.04. Partial Prepayment of Certificates. Upon surrender of any Certificate prepaid in part only, the Trustee will execute and deliver to the Owner thereof, at the expense of the City, a new Certificate or Certificates of authorized denominations equal in aggregate principal amount to the unprepaid portion of the Certificate surrendered and of the same interest rate and the same maturity.

SECTION 4.05. Effect of Notice of Prepayment. Moneys for the prepayment (including the interest to the applicable date of prepayment) of Certificates having been set aside in the Installment Payment Fund, the Certificates will become due and payable on the date of such prepayment, and, upon presentation and surrender thereof at the Trust Office of the Trustee, said Certificates will be paid at the unpaid principal amount (or applicable portion thereof)

represented thereby plus any applicable premium and plus interest accrued and unpaid to said date of prepayment.

If, on said date of prepayment, moneys for the prepayment of all the Certificates to be prepaid, together with interest represented thereby to said date of prepayment, are held by the Trustee so as to be available therefor on such date of prepayment, then, from and after said date of prepayment, interest represented by the Certificates will cease to accrue and become payable. All moneys held by the Trustee for the prepayment of Certificates will be held in trust for the account of the Owners of the Certificates so to be prepaid.

All Certificates paid at maturity or prepaid prior to maturity under the provisions of this Article IV from amounts provided by the City for that purpose will be cancelled upon surrender thereof and destroyed under Section 12.10.

SECTION 4.06. Purchase of Certificates. In lieu of prepayment of Certificates as provided in this Article IV, amounts held by the Trustee for such prepayment shall, at the written request of the City Representative received by the Trustee no later than 60 days prior to the prepayment date, be applied by the Trustee to the purchase of Certificates at public or private sale as and when and at such prices (including brokerage, accrued interest and other charges) as the City may in its discretion direct, but not to exceed the prepayment price which would be payable if such Certificates were prepaid. The aggregate principal amount of Certificates of the same maturity purchased in lieu of prepayment under this Section 4.06 may not exceed the aggregate principal amount of Certificates of such maturity which would otherwise be subject to such prepayment.

ARTICLE V

INSTALLMENT PAYMENTS; INSTALLMENT PAYMENT FUND

SECTION 5.01. Assignment of Rights in Installment Sale Agreement. The Authority hereby irrevocably assigns to the Trustee, without recourse to the Authority, all of its rights in the Installment Sale Agreement (excepting only its rights under Sections 4.8, 5.2 and 6.4 thereof), including but not limited to the right to receive and collect all of the Installment Payments and all other amounts required to be deposited in the Installment Payment Fund. The Trustee hereby accepts such assignment. Such assignment neither creates any obligations nor gives rise to any duties on the part of the Trustee other than those obligations and duties contained herein. All Installment Payments and such other amounts to which the Authority may at any time be entitled will be paid directly to the Trustee, and all of the Installment Payments collected or received by the Authority will be deemed to be held and to have been collected or received by the Authority as the agent of the Trustee, and if received by the Authority at any time shall be deposited by the Authority with the Trustee within one (1) Business Day after the receipt thereof. The Trustee shall deposit the Installment Payments and such other amounts in the Installment Payment Fund upon the receipt thereof.

SECTION 5.02. Establishment of Installment Payment Fund. The Trustee shall establish and maintain a special fund designated as the "Installment Payment Fund", into which the Trustee shall deposit all amounts paid to the Trustee for such purpose under the Installment Sale Agreement. The Trustee will hold amounts in the Installment Payment Fund in trust for the benefit of the City, the Certificate Insurer and the Owners of the Certificates. So long as any Certificates are Outstanding, neither the City nor the Authority has any beneficial right or interest in the Installment Payment Fund or the moneys deposited therein, except only as provided in the Installment Sale Agreement or herein.

SECTION 5.03. Application of Moneys. Except as provided in Section 5.04, the Trustee shall apply amounts in the Installment Payment Fund solely for the purpose of paying the principal, interest and prepayment premiums (if any) represented by the Certificates when due, in accordance with the provisions of Article II and Article IV.

SECTION 5.04. Surplus. At the written request of the City, the Trustee shall withdraw and remit to the City any surplus remaining in the Installment Payment Fund after prepayment and payment of all Certificates, including all premiums and accrued interest (if any) and payment of any applicable fees and expenses to the Trustee and any amounts then due and payable to the Certificate Insurer, or provision for such prepayment or payment having been made in accordance with Section 12.01.

ARTICLE VI

MONEYS IN FUNDS; INVESTMENT

SECTION 6.01. Held in Trust. The moneys and Permitted Investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the City, the Certificate Insurer and the Owners of the Certificates solely for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement, and are not subject to levy or attachment or lien by or for the benefit of any creditor of the Authority, the Trustee, the City, the Certificate Insurer or the Owner of any Certificates.

SECTION 6.02. Investments Authorized. At the written request of the City filed with the Trustee from time to time, the Trustee shall invest amounts held by it in any fund or account established hereunder in Permitted Investments which mature not later than the date such moneys are required or estimated by the City to be required to be expended hereunder. In the absence of any written request of the City directing the investment of uninvested moneys held by the Trustee hereunder, the Trustee shall invest such moneys in Permitted Investments described in clause [(d)] of the definition thereof. Such investments, if registrable, shall be registered in the name of the Trustee, as trustee or in the name of its nominee, and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 6.02 and is entitled to its customary fee therefor. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. Whenever in this Trust Agreement any moneys are required to be transferred by the City to the Trustee, such transfer may be accomplished by transferring a like amount of Permitted Investments. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Section 6.02.

The City shall invest amounts held by it in any fund or account established hereunder or under the Installment Sale Agreement in any investments which are authorized for the investment of City funds under the laws of the State of California.

SECTION 6.03. Accounting. The Trustee shall furnish to the City, not less than monthly, an accounting (in the form customarily used by the Trustee) of all investments and other transactions made by the Trustee under this Trust Agreement. The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law.

SECTION 6.04. Allocation of Earnings. Any income, profit or loss on such investments will be deposited in or charged to the respective funds from which such investments were made; except that: (a) income received on the investment of amounts on deposit in the Reserve Fund, to the extent not required to be retained therein in order to maintain the Reserve Requirement, shall be transferred either (i) to the Installment Payment Fund as set forth in Section 3.04, or (ii) to the

Rebate Fund as set forth in Section 9.04(f); and (b) any income received on the investment of amounts on deposit in the Project Fund shall be transferred to the Rebate Fund if and to the extent the Trustee receives written directions from a City Representative to do so in accordance with Section 9.04(f).

SECTION 6.05. Valuation and Disposition of Investments.

(a) Except as otherwise provided in subsection (b) of this Section, all investments of amounts deposited in any fund or account established hereunder, or otherwise containing gross proceeds of the Certificates (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Trust Agreement or the Tax Code) at Fair Market Value as such term is defined in subsection (d) below. The Trustee has no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the City in any written directions of a City Representative.

(b) Investments in the Reserve Fund, and investments in any funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued at their present value (within the meaning of Section 148 of the Tax Code). The City shall inform the Trustee which funds are subject to a yield restriction.

(c) Except as provided in subsection (b), for the purpose of determining the amount in any fund, the Trustee shall value any Permitted Investments credited to such fund at least quarterly at the Fair Market Value thereof. The Trustee may sell or present for prepayment, any Permitted Investment so purchased by the Trustee whenever necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee is not liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 6.05, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security – State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and any related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment.

ARTICLE VII

THE TRUSTEE

SECTION 7.01. Appointment of Trustee. U.S. Bank National Association is hereby appointed Trustee by the Authority and the City for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided herein. The City will maintain a Trustee having a corporate trust office in California, with a reported capital and surplus of at least \$50,000,000, duly authorized to exercise trust powers and subject to supervision or examination by Federal or state authority, so long as any Certificates are Outstanding. If such bank or trust company publishes a report of condition at least annually under law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section 7.01 the combined capital and surplus of such bank or trust company is as set forth in its most recent report of condition so published and must be at least \$50,000,000.

The City and the Authority will maintain a Trustee acceptable to the Certificate Insurer and qualified under the provisions of the foregoing provisions of this Section 7.01, so long as any Certificates are Outstanding.

The Trustee is hereby authorized to pay or prepay the Certificates when duly presented for payment at maturity, or on prepayment, or on purchase by the Trustee as directed by the City prior to maturity in accordance with Section 4.06, and to cancel all Certificates upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Certificates paid and discharged.

SECTION 7.02. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it hereby, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth herein, and no implied covenants or obligations will be read into this Trust Agreement against the Trustee. If an Event of Default occurs (which has not been cured or waived), the Trustee may exercise such of the rights and powers vested in it hereby, and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) No provision hereof requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if the repayment of such funds or adequate indemnity against such risk or liability is not assured to it. The Trustee is entitled to interest on any amounts advanced by it in the performance of its duties hereunder.

(c) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents or receivers and the

Trustee is not responsible for any misconduct or negligence on the part of any attorney, agent or receiver appointed with due care by it hereunder. The Trustee is entitled to advice of counsel concerning all matters of trust and its duty hereunder and is protected in any action taken or suffered by it hereunder in reliance on such advice.

(d) The Trustee is not responsible for the validity hereof or for any recital herein, or in the Certificates, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Certificates issued hereunder or intended to be secured hereby and the Trustee is not bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority or the City under the Installment Sale Agreement. The Trustee is not responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Article VI.

(e) The Trustee is not accountable for the use or application of any Certificates or the proceeds thereof. The Trustee may become the Owner of Certificates secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidence of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Certificates, whether or not such committee represents the Owners of the majority in aggregate principal amount of the Certificates then Outstanding.

(f) In the absence of bad faith on its part, Trustee is protected in acting upon any notice, request, consent, certificate, order, requisition, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith hereunder on the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Certificate, is conclusive and binding on all future Owners of the same Certificate and upon Certificates issued in exchange therefor or in place thereof.

(g) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee may rely on a certificate signed by an Authority Representative or a City Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been given notice or is deemed to have notice, as provided in Section 7.02(i), shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of an Authority Representative or a City Representative to the effect that an authorization in the form therein set forth has been adopted by the Authority or the City, as the case may be, as conclusive evidence that such authorization has been duly adopted, and is in full force and effect.

(h) The permissive right of the Trustee to do things enumerated herein shall not be construed as a duty and the Trustee is not answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee extend to its officers, directors, employees and agents.

(i) The Trustee is not required to take notice or be deemed to have notice of any Event of Default except the failure by the City to make any of the Installment Payments to the Trustee when due or the failure by the Authority or the City to file with the Trustee any document required hereby or by the Installment Sale Agreement to be so filed subsequent to the delivery of the Certificates, unless the Trustee is specifically notified in writing of such default by the Authority, the City, the Certificate Insurer or the Owners of at least 25% in aggregate principal amount of Certificates then Outstanding. All notices or other instruments required hereby or by the Installment Sale Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Trust Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default except as aforesaid.

(j) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, have the right (but not the duty) to inspect the Sewer System including all books, papers and records of the City pertaining to the Sewer System and the Certificates, and to take such memoranda from and with regard thereto as may be desired.

(k) The Trustee is not required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(l) Notwithstanding anything elsewhere herein with respect to the execution of any Certificates, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview hereof, the Trustee has the right, but is not required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition so that by the terms hereof required as a condition of such action, by the Trustee deemed desirable for the purpose of establishing any right to the execution of any Certificates, the withdrawal of any cash, or the taking of any other action by the Trustee.

(m) Before taking any action referred to in Section 11.02 at the direction of the Certificate Insurer or the Certificate Owners, the Trustee may require that a satisfactory indemnity bond or other indemnification acceptable to the Trustee be furnished by the Certificate Insurer or the Certificate Owners, or any of them, for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in connection with any such action.

(n) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. The Trustee has no liability for interest on any moneys received hereunder except such as may be agreed upon.

(o) The Trustee is not responsible for the sufficiency of the Installment Sale Agreement or its right to receive moneys under the Installment Sale Agreement.

(p) The Trustee is not liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Certificate Insurer or the Owners of a majority in aggregate principal amount of the Outstanding Certificates

relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, hereunder.

(q) The Trustee is not liable for any error of judgment made in good faith by a responsible officer of the Trustee unless it is proved that the Trustee was negligent in ascertaining the pertinent facts relating thereto.

SECTION 7.03. Fees, Charges and Expenses of Trustee. The Trustee is entitled to payment and reimbursement from the City and the Authority for reasonable fees for its services rendered hereunder and all advances, counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Upon the occurrence of an Event of Default, but only upon such occurrence, the Trustee has a first lien with right of payment prior to payment on account of principal, premium, if any, and interest represented by any Certificate upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it respectively.

SECTION 7.04. Notice to Certificate Insurer and Certificate Owners of Default. If an Event of Default occurs of which the Trustee has been given or is deemed to have notice, as provided in Section 7.02(i), then the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, (a) to the Certificate Insurer by telephone confirmed in writing, and (b) by first class mail, postage prepaid, to the Owner of each Outstanding Certificate, unless such Event of Default has been cured before the giving of such notice; *provided, however*, that unless such Event of Default consists of the failure by the City to make any Installment Payment when due, the Trustee may elect not to give such notice to the Certificate Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Certificate Owners not to give such notice.

SECTION 7.05. Removal of Trustee. So long as no Event of Default has occurred and is continuing the City may, upon at least 30 days' prior written notice and with the consent of the Authority and the Certificate Insurer, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee, the Authority and the Certificate Insurer, and may appoint a successor or successors thereto; provided that any such successor is a commercial bank or trust company meeting the requirements set forth in Section 7.01.

SECTION 7.06. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign by giving written notice by registered or certified mail to the City and the Certificate Insurer. Upon receiving such notice of resignation, the City shall promptly appoint a successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee takes effect on acceptance of appointment by the successor Trustee. Upon such acceptance, the City will mail notice thereof to the Certificate Insurer and to the Certificate Owners at their respective addresses set forth on the Registration Books.

SECTION 7.07. Appointment of Successor Trustee. If the Trustee is removed or resigns under Sections 7.05 or 7.06, respectively, with the prior written consent of the Certificate Insurer the City shall promptly appoint a successor Trustee. If the City for any reason whatsoever fails to

appoint a successor Trustee within 30 days following the delivery to the Trustee of the instrument described in Section 7.05 or within 30 days following the receipt of notice by the City under Section 7.06, at the expense of the City the Certificate Insurer or the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 7.01. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the City purporting to appoint a successor Trustee following the expiration of such 30 day period.

SECTION 7.08. Merger or Consolidation. Any company or association into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company or association is eligible under Section 7.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 7.09. Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Certificate Insurer, the Authority and the City an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, will become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the Authority, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

SECTION 7.10. Non-Liability of Trustee. The recitals, statements and representations by the City and the Authority contained herein or in the Certificates shall be taken and construed as made by and on the part of the City and the Authority, as the case may be, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee makes no representation or warranty, express or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Sewer System. In no event is the Trustee liable for special or consequential damages in connection with or arising from the Installment Sale Agreement for the existence, furnishing or use of the Sewer System.

SECTION 7.11. Nature of Trust Engagement. The Trustee undertakes to perform such duties and only such duties as are specifically set forth herein and no implied covenants or obligations shall be read into the Trust Agreement against the Trustee. In accepting the trusts hereby created, the Trustee acts solely as Trustee and not in its individual capacity and all persons, including without limitation the Certificate Insurer, the Certificate Owners, the City and the Authority having any claim against the Trustee arising from the Trust Agreement shall look only to the funds and accounts hereunder for payment except as otherwise provided herein. Under no circumstances is the Trustee liable in its individual capacity for the obligations represented by the Certificates.

SECTION 7.12. Certificate Insurer's Exercise of Rights Relating to the Trustee. The Certificate Insurer is deemed to be the sole holder of the Certificates insured by it for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners are entitled to take under this Article VII.

ARTICLE VIII

MODIFICATION OR AMENDMENT OF AGREEMENTS

SECTION 8.01. Amendments Permitted Without Consent of Owners. This Trust Agreement and the rights and obligations of the Owners of the Certificate, and the Installment Sale Agreement and the rights and obligations of the respective parties thereto, may be modified or amended at any time by a supplemental agreement, with the prior written consent of the Certificate Insurer but without the consent of any of the Certificate Owners, only to the extent permitted by law and only for any one or more of the following reasons:

- (a) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the City,
- (b) to cure, correct or supplement any ambiguous or defective provision contained herein or therein,
- (c) in any respect whatsoever in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which do not, in the opinion of Bond Counsel, materially adversely affect the security of the Certificate Owners,
- (d) to provide for matters relating to the issuance of Parity Debt or the delivery of a Qualified Reserve Fund Credit Instrument, or
- (e) if and to the extent permitted in the opinion of Bond Counsel filed with the Trustee, the City and the Authority, to delete or modify any of the provisions hereof or thereof relating to the exemption from federal income taxation of interest represented by the Certificates.

Any such supplemental agreement entered into under this Section takes effect on the execution and delivery by the parties hereto or thereto as the case may be.

SECTION 8.02. Amendments Permitted With Consent of Owners. Except as permitted under Section 8.01, this Trust Agreement and the rights and obligations of the Owners of the Certificates, and the Installment Sale Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement which takes effect when the written consents of the Certificate Insurer and the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 12.03, have been filed with the Trustee.

No modification or amendment under this Section 8.02 may (a) extend or have the effect of extending the fixed maturity of any Certificate or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the prepayment thereof, without the express consent of the Owner of such Certificate, or (b) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification of the Installment Sale Agreement, without the consent of the Owners of 100% in aggregate

principal amount of the Outstanding Certificates, or (c) modify any of the rights or obligations of the Trustee without its written assent thereto.

No such supplemental agreement may become effective unless there is filed with the Trustee the written consents of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding (exclusive of Certificates disqualified as provided in Section 12.04) and the Trustee has given the notice required below. Each such consent will be effective only if accompanied by proof of ownership of the Certificates for which such consent is given, which proof shall be such as is permitted by Section 2.10. Any such consent binds the Owner of the Certificate giving such consent and each subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Certificate Insurer and the Owners of the required percentage of Certificates have filed their consents to such supplemental agreement, the Trustee shall mail a notice to the Owners of the Certificates in the manner hereinbefore provided in this Section for the mailing of such supplemental agreement of the notice of adoption thereof, stating in substance that such supplemental agreement has been consented to by the Owners of the required percentage of Certificates and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental agreement shall become effective upon the mail of such last-mentioned notice, and such supplemental agreement shall be deemed conclusively binding upon the parties hereto, the Certificate Insurer and the Owners of all Certificates at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60 day period.

SECTION 8.03. Effect of Supplemental Agreement. From and after the time any supplemental agreement becomes effective under this Article VIII, this Trust Agreement or the Installment Sale Agreement, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Certificates Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental agreement shall be deemed to be part of the terms and conditions of this Trust Agreement or the Installment Sale Agreement for any and all purposes.

SECTION 8.04. Endorsement or Replacement of Certificates Delivered After Amendments. The Trustee may determine that Certificates shall bear a notation, by endorsement or otherwise, in form approved by the Trustee, as to such action. In that case, upon demand of the Owner of any Certificate Outstanding at such effective date and presentation of such Owner's Certificate for the purpose at the Trust Office of the Trustee, a suitable notation shall be made on such Certificate. The Trustee may determine that the delivery of substitute Certificates, so modified as in the opinion of the Trustee is necessary to conform to such Certificate Owners' action, which substitute Certificates shall thereupon be prepared, executed and delivered at the expense

of the City. In that case, upon demand of the Owner of any Certificate then Outstanding, such substitute Certificate shall be exchanged at the Trust Office of the Trustee, without cost to such Owner, for a Certificate of the same character then Outstanding, upon surrender of such Outstanding Certificate.

SECTION 8.05. Amendatory Endorsement of Certificates. The provisions of this Article VIII do not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by such Owner, provided that proper notation thereof is made on such Certificates.

ARTICLE IX

OTHER COVENANTS

SECTION 9.01. Compliance With and Enforcement of Installment Sale Agreement. The City covenants with the Trustee, for the benefit of the Owners of the Certificates and the Certificate Insurer, to perform all obligations and duties imposed on it under the Installment Sale Agreement.

SECTION 9.02. Observance of Laws and Regulations. The City will observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States or of the State of California, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the City, including its right to exist and carry on business as a public agency, to the end that such rights, privileges and franchises shall be maintained and preserved, and will not become abandoned, forfeited or in any manner impaired.

SECTION 9.03. Recordation and Filing. The City will record and file all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee, the Certificate Insurer and the Certificate Owners.

SECTION 9.04. Tax Covenants.

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Certificates are not used in a manner which would cause any of the obligations of the City under the Installment Sale Agreement to become “private activity bonds” under and within the meaning of Section 141(a) of the Tax Code.

(b) Private Loan Limitation. The City shall assure that no more than 5% of the aggregate amount of the proceeds of the Certificates are used, directly or indirectly, to make or finance a loan (other than loans constituting nonpurpose obligations as defined in the Tax Code or constituting assessments) to persons other than state or local government units.

(c) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the obligations of the City under the Installment Sale Agreement to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Certificates or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the obligations of the City under the Installment Sale Agreement to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, including but not limited to from amounts on deposit in the Rebate Fund.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of 6 years following the retirement of the Certificates, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements herein.

(f) Establishment of Rebate Fund. At the written request of a City Representative, the Trustee shall establish and maintain a special fund designated as the "Rebate Fund" to be held by the Trustee for the benefit of the City. The Trustee shall deposit into the Rebate Fund any amounts provided to it by the City for that purpose, and shall also transfer into the Rebate Fund any earnings received from the investment of amounts in the Project Fund or the Reserve Fund (to the extent permitted by Section 6.04), if and to the extent so directed in writing by a City Representative. At the written direction of the City, amounts on deposit in the Rebate Fund shall be disbursed by the Trustee for the purpose of making payments of Excess Investment Earnings in accordance with subsection (e) of this Section. If the City determines that any amounts held by the Trustee in the Rebate Fund are not required to make payments of Excess Investment Earnings, such amounts shall be transferred to the Installment Payment Fund at the written direction of the City.

[(g) Small Issuer Exemption from Bank Nondeductibility Restriction. The City hereby designates the Certificates for purposes of paragraph (3) of section 265(b) of the Code and covenants that none of the Certificates constitute private activity bonds as defined in section 141 of the Code, and that not more than \$10,000,000 aggregate principal amount of obligations the interest on which is excludable (under section 103(a) of the Code) from gross income for federal income taxes (excluding, however, private activity bonds, as defined in section 141 of the Code, other than qualified 501(c)(3) bonds as defined in section 145 of the Code), including the Certificates, have been or shall be issued by the City, including all subordinate entities of the City, during the calendar year 2006.]

SECTION 9.05. Continuing Disclosure. The City shall comply with and carry out all of the provisions of that certain Continuing Disclosure Certificate executed and delivered by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Trust Agreement, failure of the City to comply with such Continuing Disclosure Certificate does not constitute an Event of Default. However, any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Certificates may take such

actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

SECTION 9.06. Rights Under Certificate Insurance Policy. [to come]

SECTION 9.07. Further Assurances. The Authority and the City will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and of the Installment Sale Agreement, and for the better assuring and confirming unto the Certificate Insurer and the Owners of the Certificates the rights and benefits provided herein.

ARTICLE X

LIMITATION OF LIABILITY

SECTION 10.01. Limited Liability of City and Authority. Except for the payment of Installment Payments when due in accordance with the Installment Sale Agreement and the performance of the other covenants and agreements of the City contained in the Installment Sale Agreement and herein, the City has no pecuniary obligation or liability to the Authority, the Trustee, the Certificate Insurer or the Owners of the Certificates with respect hereto or the terms, execution, delivery or transfer of the Certificates, or the distribution of Installment Payments to the Owners by the Trustee, except as expressly set forth herein.

The Authority has no pecuniary obligation or liability to the Certificate Insurer, the City or the Trustee, or to any of the Owners of the Certificates, with respect to the performance by the City of its obligations under the Installment Sale Agreement or this Trust Agreement, with respect hereto or the terms, execution, delivery or transfer of the Certificates, or with respect to the distribution of Installment Payments to the Owners by the Trustee.

SECTION 10.02. No Liability for Trustee Performance. Neither the City nor the Authority has any obligation or liability to any of the other parties or to the Certificate Insurer or the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed on it hereunder.

SECTION 10.03. Indemnification of Authority and Trustee. The City shall indemnify the Authority and Trustee, and their respective officers, agents and employees, against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of or in connection with any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on, the Sewer System by the City,
- (b) any breach or default on the part of the City in the performance of any of its obligations hereunder and any other agreement made and entered into for purposes of the Sewer System,
- (c) any act of the City or of any of its agents, contractors, servants, employees, licensees with respect to the Sewer System,
- (d) any act of any assignee of, or purchaser from the City or of any of its agents, contractors, servants, employees or licensees with respect to the Sewer System,
- (e) the actions of any other party, including but not limited to the ownership, operation or use of the Sewer System by the City,
- (f) the Trustee's exercise and performance of its powers and duties hereunder, or

(g) the execution, delivery and sale of the Certificates.

No indemnification is made under this Section or elsewhere herein for the willful misconduct or negligence by the Trustee or the Authority, or their respective officers, agents, employees, successors or assigns. The City's obligations under this Section 10.03 survive the maturity and payment of the Certificates.

SECTION 10.04. Opinion of Counsel. Before being required to take any action, the Trustee may require an opinion of counsel acceptable to the Trustee, or an opinion of Bond Counsel acceptable to the Trustee with respect to any federal tax matters, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, Trustee is protected in relying on any such opinion or certificate obtained by it.

SECTION 10.05. Limitation of Rights to Parties and Certificate Owners. Nothing herein or in the Certificates expressed or implied gives any person other than the City, the Authority, the Trustee, the Certificate Insurer and the Owners of the Certificates, any legal or equitable right, remedy or claim under or in respect hereof or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the City, the Authority, the Trustee, the Certificate Insurer and the Owners.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATE OWNERS

SECTION 11.01. Assignment of Rights. Under Section 5.01, the Authority assigns to the Trustee all of the Authority's rights in and to the Installment Sale Agreement (excepting only the Authority's rights under Sections 4.8, 5.2 and 6.4 thereof), including without limitation all of the Authority's rights to exercise such rights and remedies conferred on the Authority under the Installment Sale Agreement as may be necessary or convenient (a) to enforce payment of the Installment Payments and any other amounts required to be deposited in the Installment Payment Fund, and (b) otherwise to exercise the Authority's rights and take any action to protect the interests of the Trustee, the Certificate Insurer or the Certificate Owners upon the occurrence of an Event of Default.

SECTION 11.02. Remedies. If an Event of Default occurs, then and in each and every such case during the continuance of such Event of Default, with the prior written consent of the Certificate Insurer, the Trustee may, and at the written direction of the Certificate Insurer or (with the prior written consent of the Certificate Insurer) at the prior written direction of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, the Trustee shall exercise any and all remedies available under law or granted under the Installment Sale Agreement.

SECTION 11.03. Application of Funds. All moneys received by the Trustee under any right given or action taken under the provisions of this Article XI or Article VI of the Installment Sale Agreement shall be applied by the Trustee in the following order:

First, to the payment of the fees, costs and expenses of the Trustee and of the Certificate Owners in declaring and enforcing such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel;

Second, to the payment of the whole amount then owing and unpaid with respect to the Certificates for principal and interest, with interest on the overdue principal and installments of interest at the Overdue Rate (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest and interest on overdue principal, as aforesaid), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

Third, to the payment of any amounts due or to become due to the Certificate Insurer under the Certificate Insurance Policy.

SECTION 11.04. Institution of Legal Proceedings. If one or more Events of Default occur and are continuing, with the prior written consent of the Certificate Insurer the Trustee in its discretion may, and upon the written request of the Certificate Insurer or (with the prior written consent of the Certificate Insurer) at the written request of the Owners of a majority in principal amount of the Certificates then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Certificate Insurer or the Owners of Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Trustee shall deem most effectual in support of any of its rights or duties hereunder.

SECTION 11.05. Non-waiver. Nothing in this Article XI or in any other provision hereof or in the Certificates, affects or impairs the obligation of the City, which is absolute and unconditional, to pay or prepay the Installment Payments as provided in the Installment Sale Agreement, or affects or impairs the right of action, which is also absolute and unconditional, of the Certificate Insurer and the Certificate Owners to institute suit to enforce and collect such payment. No delay or omission of the Trustee or of the Certificate Insurer or any Owner of any of the Certificates to exercise any right or power arising upon the happening of any Event of Default impairs any such right or power or waives any such Event of Default or acquiesces therein, and every power and remedy given by this Article XI to the Trustee, the Certificate Insurer or the Owners of Certificates may be exercised from time to time and as often as the Trustee, the Certificate Insurer or the Certificate Owners deem expedient.

SECTION 11.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or the Certificate Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

SECTION 11.07. Power of Trustee to Control Proceedings. If the Trustee, upon the occurrence of an Event of Default, takes any action, by judicial proceedings or otherwise, under its duties hereunder, whether on its own discretion or at the request of the Certificate Insurer or the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Certificate Insurer and the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action.

SECTION 11.08. Limitation on Certificate Owners' Right to Sue. No Owner of any Outstanding Certificate has the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless:

(a) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default;

(b) the Owners of a majority in aggregate principal amount of all the Certificates then Outstanding have requested the Trustee in writing to exercise the

powers hereinbefore granted or to institute such action, suit or proceeding in its own name;

(c) said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and

(d) the Trustee has refused or failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of Certificates shall have any right in any manner whatever by its or their action to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Certificate Insurer and all Owners of the Outstanding Certificates.

The right of any Owner of any Certificate to receive payment of said Owner's direct, undivided fractional interest in the Installment Payments as the same become due, or to institute suit for the enforcement of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision hereof.

SECTION 11.09. Rights of the Certificate Insurer. Anything in this Trust Agreement to the contrary notwithstanding, upon the occurrence and continuation of an Event of Default, the Certificate Insurer is entitled to control and direct the enforcement of all rights and remedies granted hereunder to the Certificate Owners, or to the Trustee for the benefit of the Certificate Owners, including but not limited to the right to approve all waivers of any Events of Default. The rights granted to the Certificate Insurer hereunder shall be deemed terminated and shall not be exercisable by the Certificate Insurer during any period during which the Certificate Insurer is in payment default under the Certificate Insurance Policy.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Discharge of this Trust Agreement. If and when the obligations represented by any Outstanding Certificates are paid and discharged in any one or more of the following ways:

(a) by paying or causing to be paid the principal, interest and prepayment premiums (if any) represented by such Certificates Outstanding when due; or

(b) by irrevocably depositing with the Trustee or any other fiduciary, under an escrow deposit and trust agreement, security for the payment of Installment Payments relating to such Certificates as more particularly described in Section 7.1 of the Installment Sale Agreement, said security to be held by the Trustee on behalf of the City to be applied by the Trustee or by such other fiduciary to pay or prepay such Installment Payments as the same become due, under Section 7.1 of the Installment Sale Agreement;

then, notwithstanding that such Certificates have not been surrendered for payment, all rights hereunder of the Owners of such Certificates and all obligations of the Authority, the Trustee and the City with respect to such Certificates shall cease and terminate, except only the obligations of the Trustee under Sections 2.07 and 2.08, and the obligation of the Trustee to pay or cause to be paid, from Installment Payments paid by or on behalf of the City from funds deposited under the preceding paragraph (b) of this Section, to the Owners of such Certificates not so surrendered and paid all sums represented thereby when due and in the event of deposits under the preceding paragraph (b), such Certificates will continue to represent direct, undivided fractional interests of the Owners thereof in the Installment Payments.

Any funds held by the Trustee, at the time of discharge of the obligations represented by all Outstanding Certificates as a result of one of the events described in the preceding paragraphs (a) or (b) of this Section, which are not required for the payment to be made to Owners, shall, upon payment in full of all fees and expenses of the Trustee (including attorneys' fees) then due, be paid over to the City.

Notwithstanding the foregoing provisions of this Section 12.01, if the principal and interest represented by the Certificates are paid by the Certificate Insurer under the Certificate Insurance Policy, (a) the Certificates will remain Outstanding and will not be deemed to have been paid and discharged under this Section 12.01, (b) the obligations of the Trustee and the City will continue in full force and effect with respect to such Certificates, and (c) the Certificate Insurer will be fully subrogated to the rights of all Owners of the Certificates so paid.

SECTION 12.02. Notices. Any notice, request, complaint, demand or other communication hereunder shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States mail, postage

prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority, the Trustee or the Certificate Insurer may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:*

City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attention: Director of Financial Services
Fax: (408) 586-3110

If to the Trustee:

U.S. Bank Trust National Association
One California Street, Suite 2100
San Francisco, California 94111
Attention: Corporate Trust Services, Mail Station
SF-CA-SF
Fax: (415) 273-4591

If to the Certificate Insurer:

Attention:
Fax:

The Authority, the City and the Trustee shall give the Certificate Insurer a copy of any notice required to be delivered hereunder to Certificate Owners at the address set forth in this Section 12.02.

SECTION 12.03. Records. The Trustee will keep complete and accurate records of all moneys received and disbursed hereunder, which are available for inspection by the City, the Authority, the Certificate Insurer and any Owner, or the agent of any of them, upon prior written request during regular business hours.

SECTION 12.04. Disqualified Certificates. In determining whether the Owners of the requisite aggregate principal amount of Certificates have concurred in any demand, request, direction, consent or waiver hereunder, Certificates which are owned or held by or for the account of the City or the Authority (but excluding Certificates held in any employees' retirement fund) will be disregarded and deemed not to be Outstanding for the purpose of any such determination. For the purpose of determining whether the Trustee is protected in relying on any such demand, request, direction, consent or waiver, only Certificates which the Trustee knows to be so owned or held shall be disregarded.

SECTION 12.05. Payment of Certificates After Discharge. Notwithstanding any provisions hereof, but subject to any applicable laws of the State of California relating to the escheat of funds or property, any moneys held by the Trustee for the payment of the principal or interest represented by any Certificates and remaining unclaimed for 2 years after the principal represented by all of the Certificates has become due and payable (whether at maturity or upon

call for prepayment or by acceleration as provided herein), if such moneys were so held at such date, or 2 years after the date of deposit of such moneys if deposited after said date when all of the Certificates became due and payable, shall be repaid to the City free from the trusts created hereby upon receipt of an indemnification agreement acceptable to the City and the Trustee indemnifying the Trustee with respect to claims of Owners of Certificates which have not yet been paid, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however*, that before the repayment of such moneys to the City as aforesaid, the Trustee may (at the cost of the City) first mail, by first class mail postage prepaid, to the Owners of Certificates which have not yet been paid, at the respective addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Certificates so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof. Any moneys so held by the Trustee will be held uninvested.

SECTION 12.06. Governing Law. This Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 12.07. Binding Effect; Successors; Benefits Limited to Parties. This Trust Agreement is binding on and inures to the benefit of the parties and their respective successors and assigns. Whenever herein either the Authority, the City, the Certificate Insurer or the Trustee is named or referred to, such reference includes the successors or assigns thereof, and all the covenants and agreements contained herein by or on behalf of the Authority, the City, the Certificate Insurer or the Trustee will bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not. Nothing herein expressed or implied confers on, or to gives to, any person or entity, other than the Authority, the City, the Trustee, the Certificate Insurer or the Certificate Owners, any right, remedy or claim hereunder or by reason hereof or of any covenant, condition or stipulation contained herein. All covenants, stipulations, promises and agreements contained herein by or on behalf of the Authority or the City are for the sole and exclusive benefit of the Authority, the City, the Trustee, the Certificate Insurer and the Certificate Owners.

SECTION 12.08. Third-Party Beneficiary. The Certificate Insurer is a third-party beneficiary of this Trust Agreement.

SECTION 12.09. Execution in Counterparts. This Trust Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same agreement.

SECTION 12.10. Delivery of Cancelled Certificates. Whenever provision is made herein for the surrender to or cancellation by the Trustee of any Certificates, the Trustee shall cancel and destroy such Certificates and shall deliver a certificate of destruction with respect thereto to the City.

SECTION 12.11. Authority and City Representatives. Whenever under the provisions hereof the approval of the Authority or the City is required, or a written certificate, requisition, direction or order is required to be delivered by the City or the Authority to the Trustee, or the Authority

or the City is required to take some action at the request of the other, such approval or such request shall be given, and such certificate, requisition, direction or order shall be executed, for the Authority by an Authority Representative and for the City by a City Representative, and any party hereto is authorized to rely upon any such approval, request, certificate, requisition, direction or order.

SECTION 12.12. Headings. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and do not affect the meaning, construction or effect hereof. All references herein to “Articles”, “Sections”, and other subdivisions are to the corresponding Articles, Sections or subdivisions hereof; and the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 12.13. Waiver of Notice. Whenever the giving of notice by mail or otherwise is required hereunder, the giving of such notice may be waived in writing by the person entitled to receive it, and the giving or receipt of such notice is not a condition precedent to the validity of any action taken in reliance on such waiver.

SECTION 12.14. Severability of Invalid Provisions. If any one or more of the provisions contained herein or in the Certificates are for any reason held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases hereof may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Trust Agreement as of the date and year first above written.

U.S BANK NATIONAL ASSOCIATION, *as*
Trustee

By _____
Authorized Officer

MILPITAS PUBLIC FINANCING AUTHORITY

By _____

CITY OF MILPITAS

By _____

APPENDIX A

DEFINITIONS

Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Trust Agreement have the respective meanings specified in this Appendix A.

“Additional Payments” means the amounts payable by the City under Section 4.8 of the Installment Sale Agreement.

“Additional Revenues” means, with respect to the issuance of any Parity Debt, any or all of the following amounts:

(i) An allowance for Net Revenues from any additions or improvements to or extensions of the Sewer System to be made by the City during the 36 month period following the issuance of such Parity Debt, in an amount equal to 100% of the estimated additional average annual Net Revenues to be derived from all properties which are improved with a structure the construction of which has been completed prior to the date of issuance of such Parity Debt and to which service will be provided by such additions, improvements and extensions, all as shown by the certificate or opinion of a Fiscal Consultant.

(ii) An allowance for Net Revenues arising from any increase in the charges made for service from the Sewer System which has become effective prior to the incurring of such Parity Debt but which, during all or any part of the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12 month period selected by the City under Section 5.8(b) of the Installment Sale Agreement, was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or 12 month period, all as shown by the certificate or opinion of a Fiscal Consultant.

“Authority” means the Milpitas Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California.

“Authority Representative” means the Chairman, Executive Director or Treasurer of the Authority, or any other person authorized by resolution of the Board of Directors of the Authority to act on behalf of the Authority under or with respect to the Installment Sale Agreement and this Trust Agreement.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income for purposes of federal income taxation under Section 103 of the Tax Code.

“Business Day” means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State of California, or in any state in which the Trust Office of the Trustee is located, are closed.

“Certificate Insurance Policy” means the policy of municipal bond insurance issued by the Certificate Insurer, insuring payment when due of principal and interest represented by the Certificates.

“Certificate Insurer” means _____, including its successors, as issuer of the Certificate Insurance Policy.

“Certificates” means the \$ _____ aggregate principal amount of certificates of participation, designated the Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing), executed and delivered hereunder and at any time Outstanding hereunder.

“City” means the City of Milpitas, a general law city and municipal corporation duly organized and existing under the laws of the State of California.

“City Representative” means the Mayor, City Manager or Director of Financial Services of the City, or any other person authorized by resolution of the City Council of the City to act on behalf of the City under or with respect to the Installment Sale Agreement and this Trust Agreement.

“Closing Date” means November __, 2006, being the day when the Certificates, duly executed by the Trustee, are delivered to the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the execution and delivery of the Installment Sale Agreement or the execution, sale and delivery of the Certificates, including but not limited to filing and recording costs, settlement costs, underwriter’s discount and original issue discount (if any), printing costs, reproduction and binding costs, initial fees and charges of the Trustee and its counsel, initial charges of the Authority, out-of-pocket expenses incurred by the City, financing discounts, legal fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, Certificate Insurance premium, fees for execution, transportation and safekeeping of the Certificates and charges and fees in connection with the foregoing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.02.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Certificates at a yield in excess of the yield represented by the Certificates.

“Event of Default” means an event of default under the Installment Sale Agreement, as described in Section 6.1 thereof.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Fiscal Consultant” means any consultant or firm of such consultants appointed by the City and who, or each of whom: (a) is judged by the City to have experience in matters relating to the financing of Sewer System enterprises; (b) is in fact independent and not under domination of the City; (c) does not have any substantial interest, direct or indirect, with the City other than as purchaser of the Certificates or any Parity Debt; and (d) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

“Fiscal Year” means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

“Gross Revenues” means all gross charges (~~excluding~~ surcharges, if any) received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Sewer System or otherwise arising from the Sewer System, including but not limited to (a) any amounts transferred to the Sewer Fund from a Rate Stabilization Fund in accordance with Section 4.6 of the Installment Sale Agreement, and (~~b~~) investment earnings on amounts held in the Sewer Fund or in any other fund established with respect to the Sewer System. Gross Revenues do not include (i) refundable deposits made to establish credit, (ii) the proceeds of any ad valorem property taxes, (~~iii~~) the proceeds of any special assessments or special taxes levied upon real property within any improvement district served by the City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Sewer System and (iv) connection charges.

Deleted: including

Deleted: connection charges, (b)

Deleted: c

Deleted: and

“Independent Accountant” means any accountant or firm of such accountants appointed and paid by the City, and who, or each of whom (a) is in fact independent and not under domination of the City; (b) does not have any substantial interest, direct or indirect, with the City; and (c) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or other audits of the books of or reports to the City.

“Information Services” means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; FIS/Mergent, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attn: Call Notification; Standard & Poor's Securities Evaluation, Inc., 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; Xcitek, 5 Hanover Square, New York, New York 10004; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds, or no such services, as the City or the Authority may indicate in a certificate of the City or the Authority delivered to the Trustee.

“Installment Payment” means all payments required to be paid by the City on any date under Section 4.4 of the Installment Sale Agreement, including any amounts payable upon delinquent installments and including any prepayment thereof under Section 7.2 or 7.3 of the Installment Sale Agreement.

“Installment Payment Date” means, with respect to any Interest Payment Date, the 3rd Business Day preceding such Interest Payment Date.

“Installment Payment Fund” means the fund by that name established and held by the Trustee under Section 5.02.

“Installment Sale Agreement” means the Installment Sale Agreement, dated as of November 1, 2006, between the City and the Authority, together with any duly authorized and executed amendments thereto.

“Interest Payment Date” means, with respect to any Certificate, each May 1 and November 1, commencing May 1, 2007, to and including the date of maturity or the date of prepayment of such Certificate.

“Maximum Annual Debt Service” means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year so long as any of the Certificates remain Outstanding by totaling the following amounts for such Fiscal Year:

(a) the aggregate amount of the Installment Payments coming due and payable in such Fiscal Year hereunder, except to the extent payable from any security deposit under Section 7.1 of the Installment Sale Agreement;

(b) the principal amount of all outstanding Parity Debt, if any, coming due and payable by their terms in such Fiscal Year; and

(c) the amount of interest which would be due during such Fiscal Year on the aggregate principal amount of all outstanding Parity Debt, if any, which would be outstanding in such Fiscal Year if such Parity Debt are retired as scheduled; *provided, however,* that with respect to any Parity Debt which bear interest at an adjustable rate, such interest shall be calculated at an assumed rate equal to the average rate of interest per annum for each of the five previous whole calendar years as shown by the J. J. Kenny Index (or, in the event and to the extent such index is not maintained for all or any portion of such period, any similar index of variable rate interest for tax-exempt obligations as may be selected by the City in its sole discretion).

“Net Revenues” means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.05(a).

“Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid by the City to maintain and operate the Sewer System, including but not limited to (a) costs of electricity and other forms of energy supplied to the Sewer System, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Sewer System in good repair and working order, and (c) payments under any contracts, notes or leases executed in connection with the City's acquisition of the Sewer System or any part thereof and (d) payments due on any State Loan that is either not Parity Debt or the payments or any part thereof which are not subordinated to the payment of the Installment Payments. Operation and Maintenance Costs does not include (i) debt service payable on obligations incurred by the City with respect to the Sewer System (except as described in (e) above), including but not limited to the Installment Payments and any Parity Debt, (ii) capital costs in excess of those, if any, required in (b) above, (iii) depreciation, replacement and obsolescence charges or reserves therefor, (iv) amortization of intangibles or other bookkeeping entries of a similar nature, and (v) any overhead costs of the City to be repaid through annual transfer to the City's General Fund.

Deleted: iii

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“Original Purchaser” means _____, as original purchaser of the Certificates at the competitive public sale thereof.

“Outstanding”, when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 12.05) all Certificates theretofore executed and delivered by the Trustee hereunder except (a) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (b) Certificates paid and discharged in accordance with Section 12.01, provided that, if such Certificates are to be prepaid prior to maturity, notice of such prepayment has been given as provided in Section 4.03 or provision satisfactory to the Trustee has been made for the giving of such notice; and (c) Certificates in lieu of or in exchange for which other Certificates has been executed and delivered by the Trustee under Section 2.08.

“Overdue Rate” means the highest rate of interest represented by any of the Outstanding Certificates.

“Owner”, when used with respect to a Certificate, means the person in whose name the ownership of such Certificate shall be registered on the Registration Books.

“Parity Debt” means any bonds, notes, leases, installment sale agreements or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued under and in accordance with Section 5.8 of the Installment Sale Agreement.

“Parity Debt Documents” means, collectively, the indenture of trust, trust agreement or other document authorizing the issuance of any Parity Debt or any securities which evidence Parity Debt.

[“Permitted Investments” means any of the following:

- (a) Federal Securities;

- (b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) certificates of beneficial ownership of the Farmers Home Administration; (ii) Federal Housing Administration debentures; (iii) participation certificates of the General Services Administration; (iv) guaranteed mortgage-backed bonds or guaranteed pass-through obligations of the Government National Mortgage Association; (v) guaranteed Title XI financings of the U.S. Maritime Administration; and (vi) project notes, local authority bonds, new communities debentures and U.S. public housing notes and bonds of the U.S. Department of Housing and Urban Development.
- (c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities only as stripped by the agency itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of the Federal National Mortgage Association; (iv) senior debt obligations of the Student Loan Marketing Association; (v) obligations of the Resolution Funding Corporation; and (vi) consolidated system-wide bonds and notes of the Farm Credit System.
- (d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAm or AAm, and a rating by Moody's of Aaa, Aa1 or Aa2 (such funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services).
- (e) Certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral described in (a) or (b) above, which have a maturity not greater than one year from the date of investment and which are issued by commercial banks, savings and loan associations or mutual savings banks whose short-term obligations are rated "A-1+" or better by S&P and "Prime-1" by Moody's, which collateral must be held by a third party and provided that the Trustee must have a perfected first security interest in such collateral.
- (f) Certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee and its affiliates) which are fully insured by FDIC, including BIF and SAIF.
- (g) Investment agreements acceptable to the Certificate Insurer.
- (h) Commercial paper rated "Prime-1" by Moody's and "A-1+" or better by S&P.
- (i) Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

(j) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's, and "A-1+" by S&P.

(k) pre-refunded municipal bonds rated in the highest rating category by each Rating Agency then rating the Certificates; provided, however, pre-refunded municipal bonds rated by only one Rating Agency then rating the Certificates rating) are acceptable if such pre-refunded municipal bonds were pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or pre-refunded municipal bonds rated in the highest rating category by such Rating Agency;

(l) The Local Agency Investment Fund which is administered by the California Treasurer for the investment of funds belonging to local agencies within the State of California, provided for investment of funds held by the Trustee, the Trustee is entitled to make investments and withdrawals in its own name as Trustee.

(m) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the California Government Code which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the California Government Code, as it may be amended, including but not limited to the California Asset Management Program (CAMP).

(n) Any other investments permitted in writing by the Certificate Insurer.]

"Project" means the facilities, improvements and other property described more fully in Appendix B attached to the Installment Sale Agreement, as that Appendix may be amended from time to time in accordance with the Installment Sale Agreement.

"Project Fund" means the fund by that name established and held by the City under Section 3.03.

"Project Costs" means, with respect to the Project, all costs of the acquisition, construction and installation thereof, including but not limited to:

(a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition, construction and installation of the Project;

(b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;

(c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;

(d) all costs of preliminary design, engineering, planning and other preliminary costs of the Project, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, environmental studies, all costs of supervising construction, as well as costs incurred for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;

(e) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the acquisition, construction and installation of the Project;

(f) all financing costs incurred in connection with the acquisition, construction and installation of such Project; and

(g) the interest components of the Installment Payments during the period of acquisition, construction and installation of the Project.

“Qualified Reserve Fund Credit Instrument” means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Trustee under Section 3.04, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) the long-term credit rating of such bank or insurance company is A or better from each Rating Agency; (b) such letter of credit or surety bond has a term of at least 12 months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released under Section 3.04; and (d) the Trustee is authorized under the terms of such letter of credit or surety bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Installment Payment Fund for the purpose of making payments required under Section 5.02.

“Rate Stabilization Fund” means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the Sewer System, which fund is established, held and maintained in accordance with Section 4.6 of the Installment Sale Agreement.

“Rating Agency” means, as of any date, each nationally-recognized municipal bond rating agency which then maintains a rating on the Certificates.

“Rebate Fund” means the fund by that name established and held by the Trustee under Section 9.04(f).

“Record Date” means the close of business on the 15th day of the month preceding each Interest Payment Date, whether or not such 15th day is a Business Day.

“Registration Books” means the records maintained by the Trustee under Section 2.11 for registration of the ownership and transfer of ownership of the Certificates.

“Reserve Fund” means the fund by that name established and held by the Trustee under Section 3.04.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the lesser of (a) \$_____, or (b) the maximum amount Installment Payments payable by the City under the Installment Sale Agreement in the current or any future Fiscal Year.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in a written request of the City delivered to the Trustee.

“S&P” means Standard & Poor’s Corporation, its successors and assigns.

“Sewer Fund” means the fund or funds established and held by the City with respect to the Sewer System for the receipt and deposit of Gross Revenues.

“Sewer System” means the entire system of the City for the collection of sewage within the service area of the City, including but not limited to all facilities, properties, lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official guidance published, under the Tax Code.

“Term” means, when used with respect to the Installment Sale Agreement, the time during which the Installment Sale Agreement is in effect, as provided in Section 4.2 thereof.

“Term Certificates” means the Certificates maturing on November 1, 20__ and on November 1, 20__.

“Trust Agreement” means this Trust Agreement, together with any amendments or supplements hereto permitted to be made hereunder.

“Trust Office” means, with respect to the Trustee, the corporate trust office of the Trustee at its address set forth in Section 12.02; provided, however, that for purposes of the payment, prepayment, cancellation, surrender, transfer or exchange of certificates, such term meant the corporate trust office of the Trustee located in St. Paul, Minnesota, or at such other or additional offices as may be specified by the Trustee in writing to the City.

“Trustee” means U.S. Bank National Association, or any successor thereto acting as Trustee hereunder.

APPENDIX B

[FORM OF CERTIFICATE OF PARTICIPATION]

R-__

\$_____

**CERTIFICATE OF PARTICIPATION,
2006 SERIES A
(CITY OF MILPITAS SEWER FINANCING)**

**Evidencing the Direct, Undivided Fractional Interest of the
Owner Hereof in Installment Payments to be Made by the**

CITY OF MILPITAS, CALIFORNIA

**As the Purchase Price For Certain Property Under an
Installment Sale Agreement with the
MILPITAS PUBLIC FINANCING AUTHORITY**

RATE OF INTEREST: MATURITY DATE: ORIGINAL ISSUE DATE: CUSIP:
November __, 2006

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

THIS IS TO CERTIFY THAT the Registered Owner identified above, or registered assigns, as the registered owner (the "Registered Owner") of this Certificate of Participation (this "Certificate") is the owner of a direct, undivided fractional interest in Installment Payments (the "Installment Payments") payable by the City of Milpitas, a municipal corporation duly organized and existing under the laws of the State of California (the "City") under an Installment Sale Agreement dated as of November 1, 2006, (the "Installment Sale Agreement") between the City and the Milpitas Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), as the purchase price for certain property which is to be used in the sewage collection system of the City (the "Sewer System"). The Installment Payments and certain other rights and interests under the Installment Sale Agreement have been assigned to U.S. Bank National Association, as trustee (the "Trustee"), having a corporate trust office in San Francisco, California (the "Trust Office").

The Registered Owner of this Certificate is entitled to receive, subject to the terms of the Installment Sale Agreement, on the Maturity Date identified above, or any earlier prepayment date, the Principal Amount identified above representing a direct, undivided fractional share of the portion of the Installment Payments designated as principal, and to receive on May 1 and

November 1 of each year, commencing May 1, 2007 (the "Interest Payment Dates") until payment in full of said principal, the Registered Owner's direct, undivided fractional share of the Installment Payments designated as interest coming due during the interest period immediately preceding each of the Interest Payment Dates. Interest represented hereby shall be payable from the Interest Payment Date next preceding the date of execution of this Certificate unless (a) this Certificate is executed after the close of business on the 15th day of the month immediately preceding an Interest Payment Date and on or before such Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (b) unless this Certificate is executed on or before April 15, 2007, in which event interest shall be payable from the Original Issue Date identified above. The Registered Owner's share of the portion of the Installment Payments designated as interest is the result of the multiplication of the aforesaid share of the portion of the Installment Payments designated as principal by the Rate of Interest per annum identified above, calculated on the basis of a 360-day year comprised of twelve 30-day months. Principal and prepayment premium (if any) represented hereby is payable in lawful money of the United States of America upon surrender hereof at the Trust Office of the Trustee. Interest represented hereby is payable by check mailed by first class mail by the Trustee on each Interest Payment Date to the Registered Owner at such Owner's address as it appears on the registration books of the Trustee as of the close of business on the 15th day of the preceding month; *provided, however*, that at the written request of the owner of Certificates in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of the 15th day of the month preceding an Interest Payment Date, interest represented by such Certificates shall be paid on such Interest Payment Date by wire transfer in immediately available funds to such account within the United States of America as shall be specified in such request.

This Certificate has been executed and delivered by the Trustee under the terms of a Trust Agreement dated as of November 1, 2006, among the Trustee, the Authority and the City (the "Trust Agreement"). The City has certified that it is authorized to enter into the Installment Sale Agreement and the Trust Agreement under the laws of the State of California, for the purpose of financing the acquisition, construction and improvement of properties used for the public purposes of the City relating to its Sewer System. Reference is hereby made to the Installment Sale Agreement and the Trust Agreement (copies of which are on file at the Trust Office of the Trustee) for a description of the terms on which the Certificates are delivered, the rights thereunder of the owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Installment Sale Agreement, to all of the provisions of the Installment Sale Agreement and the Trust Agreement the Registered Owner of this Certificate, by acceptance hereof, assents and agrees.

The City is obligated under the Installment Sale Agreement to pay the Installment Payments from the Net Revenues of the Sewer System (as those terms are defined in the Installment Sale Agreement). The obligation of the City to pay the Installment Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay the Installment Payments does not constitute a debt of the City, the State of California or any of its political subdivisions, and does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Certificates maturing on or before November 1, 2016, are not subject to optional prepayment prior to the respective stated maturities. The Certificates maturing on or after November 1, 2017, are subject to optional prepayment in whole on any date on or after November 1, 2016, or in part, from prepayments of the Installment Payments made at the option of the City under the Installment Sale Agreement, at a prepayment price (expressed as percentages of the principal amount of Certificates or portions thereof to be prepaid) set forth in the following table, in each case with accrued interest represented thereby to the prepayment date:

<u>Prepayment Dates</u>	<u>Prepayment Price</u>
November 1, 2016 through October 31, 2017	102%
November 1, 2017 and thereafter	100

The Certificates maturing on November 1, 20__ and on November 1, 20__, are also subject to mandatory sinking fund prepayment by lot on November 1 in each year as shown in the following respective tables, from the principal components of the Installment Payments required to be paid with respect to each of such dates, at a prepayment price equal to 100% of the principal amount to be prepaid, together with accrued interest represented thereby to the prepayment date, without premium, as follows:

Term Certificates Maturing November 1, 20__

<u>Prepayment Date</u> <u>(November 1)</u>	<u>Principal Amount of</u> <u>Term Certificates to be Prepaid</u>
---	--

Term Certificates Maturing November 1, 20__

<u>Prepayment Date</u> <u>(November 1)</u>	<u>Principal Amount of</u> <u>Term Certificates to be Prepaid</u>
---	--

As provided in the Trust Agreement, notice of prepayment shall be mailed by the Trustee by first class mail, postage prepaid, not less than 30 nor more than 60 days before the prepayment date, to the registered owners of the Certificates to be prepaid, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for prepayment or the cessation of accrual of interest represented thereby. If this Certificate is called for prepayment and payment is duly provided therefor as specified in the Trust Agreement, interest represented hereby shall cease to accrue from and after the date fixed for prepayment.

This Certificate is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates, of authorized denomination or denominations, representing the same aggregate principal amount and representing the same rate of interest, will be delivered to the transferee in

exchange herefor. The City, the Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, whether or not this Certificate shall be overdue, and the City, the Authority and the Trustee shall not be affected by any notice to the contrary.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal amount of the Certificates then outstanding, and may be amended without such consent under certain circumstances; provided that no such amendment shall extend the fixed maturity of any Certificate or reduce the interest or principal represented thereby, without the express consent of the owner of such Certificate.

The City has certified, recited and declared that all things, conditions and acts required by the laws of the State of California, the Installment Sale Agreement and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Certificates, do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed and delivered by U.S. Bank National Association, as trustee, acting under the Trust Agreement.

Execution Date:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Officer

ASSIGNMENT

For value received the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within registered Certificate and hereby irrevocably constitute(s) and appoint(s)
_____ attorney, to transfer the same on the registration books of
the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution (banks, stockbrokers, saving and loan associations and credit unions with membership in an approved signature medallion program) under Securities and Exchange Commission Rule 17Ad-15.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular without alteration or enlargement or any change whatsoever.

INSTALLMENT SALE AGREEMENT

Dated as of November 1, 2006

between the

**MILPITAS PUBLIC FINANCING AUTHORITY,
as Seller**

and the

**CITY OF MILPITAS,
as Purchaser**

**Relating to
\$ _____
Certificates of Participation
2006 Series A
(City of Milpitas Sewer Financing)**

TABLE OF CONTENTS

Page

ARTICLE I	
Definitions; Rules of Interpretation	
SECTION 1.1.	Definitions
.....	2
SECTION 1.2.	Interpretation
.....	2
ARTICLE II	
Representations, Covenants and Warranties	
SECTION 2.1.	Representations, Covenants and Warranties of the City
.....	3
SECTION 2.2.	Representations, Covenants and Warranties of Authority
.....	4
ARTICLE III	
Issuance of Certificates;	
Application of Proceeds	
SECTION 3.1.	The Certificates.
.....	6
SECTION 3.2.	Deposit and Application of Funds.
.....	6
SECTION 3.3.	Acquisition and Construction of the Project
.....	6
SECTION 3.4.	Appointment of City as Agent
.....	6
SECTION 3.5.	Plans and Specifications
.....	6
SECTION 3.6.	Certificate of Completion
.....	7
ARTICLE IV	
Sale of Project;	
Installment Payments	
SECTION 4.1.	Sale
.....	8
SECTION 4.2.	Term
.....	8
SECTION 4.3.	Title
.....	8
SECTION 4.4.	Installment Payments
.....	8
SECTION 4.5.	Pledge and Application of Net Revenues
.....	9
SECTION 4.6.	Establishment of Rate Stabilization Fund
.....	10
SECTION 4.7.	Special Obligation of the City; Obligations Absolute
.....	10
SECTION 4.8.	Additional Payments
.....	11

ARTICLE V

Covenants of the City

SECTION 5.1.Disclaimer	of	Warranties	13
SECTION 5.2.Release	and	Indemnification	Covenants
SECTION 5.3.Sale	or	Eminent	Domain
SECTION 5.4.			Insurance
SECTION 5.5.Records		and	Accounts
SECTION 5.6.Rates		and	Charges
SECTION 5.7.Superior		and	Subordinate
SECTION 5.8.Issuance		of	Parity
SECTION 5.9.Operation of Sewer System in Efficient and Economical Manner			
SECTION 5.10.Compliance		with	Financing
SECTION 5.11.Assignment		and	Amendment
			Hereof

ARTICLE VI

Events of Default

SECTION 6.1.Events	of	Default	Defined
SECTION 6.2.Remedies		on	Default
SECTION 6.3.No		Remedy	Exclusive
SECTION 6.4.Agreement	to	Pay	Attorneys' Fees and Expenses
SECTION 6.5.No	Additional	Waiver	Implied by One Waiver
SECTION 6.6.	Trustee, the Certificate Insurer and Certificate Owners to Exercise Rights		

ARTICLE VII

Prepayment of Installment Payments

SECTION 7.1.Security			Deposit
SECTION 7.2.Optional			Prepayment
SECTION 7.3.Credit	for	Amounts	on
			Deposit

ARTICLE VIII

Miscellaneous

SECTION 8.1.Further	Assurances	21
SECTION 8.2.	Notices	21
SECTION 8.3.Governing	Law	21
SECTION 8.4.Binding	Effect	21
SECTION 8.5.Severability	of Invalid Provisions	22
SECTION 8.6.Article and Section Headings and References		22
SECTION 8.7.Payment on Non-Business Days		22
SECTION 8.8.Execution of Counterparts		22
SECTION 8.9.Waiver of Personal Liability		22
SECTION 8.10.Trustee and the Certificate Insurer as Third Party Beneficiaries		22

APPENDIX A Schedule of Installment Payments

APPENDIX B Description of Project

INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of November 1, 2006, is between the MILPITAS PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), as seller, and the CITY OF MILPITAS, a general law city and municipal corporation duly organized and existing under the laws of the State of California (the "City"), as purchaser.

B A C K G R O U N D :

1. The City presently owns and operates facilities and property for the collection of sewage within the service area of the City (the "Sewer System"), and the City wishes to provide funds at this time to finance certain improvements (the "Project") to the Sewer System as described in Exhibit B here.
2. The Authority has been formed for the purpose of assisting the City in the financing of facilities and property useful to the City, and the Authority has proposed to enter into this Agreement with the City under which the Authority has agreed to construct the Project and sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").
3. For the purpose of obtaining the moneys required to finance the Project in accordance with the terms hereof, the Authority has assigned and transferred certain of its rights under this Agreement to the Trustee under a Trust Agreement dated as of November 1, 2006, among the City, the Authority and the Trustee, under which the Trustee has executed and delivered Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) in the aggregate principal amount of \$_____ (the "Certificates"), evidencing direct, undivided fractional interests in the Installment Payments.
4. The City has determined to secure the Installment Payments with a pledge of and lien on the Net Revenues as provided herein.
5. The payment of principal and interest represented by the Certificates is insured by a municipal bond insurance policy issued by _____ (the "Certificate Insurer").

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Authority formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given them in Appendix A to the Trust Agreement.

SECTION 1.2. Interpretation.

- (a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.
- (b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.
- (c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Authority and the Certificate Insurer as follows:

(a) Due Organization and Existence. The City is a general law city and municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under said laws to enter into this Agreement and the Trust Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement and the Trust Agreement.

(b) Due Execution. The representatives of the City executing this Agreement and the Trust Agreement are fully authorized to execute the same.

(c) Valid, Binding and Enforceable Obligations. This Agreement and the Trust Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

(d) No Conflicts. The execution and delivery of this Agreement and the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement and the Trust Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement and the Trust Agreement.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or the Trust Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Trust Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement and the Trust Agreement.

(g) Prior Indebtedness. The City has not issued or incurred any obligations which are currently outstanding having any priority in payment out of the Gross Revenues or the Net Revenues over the payment of the Installment Payments as provided herein.

SECTION 2.2. Representations, Covenants and Warranties of Authority. The Authority represents, covenants and warrants to the City and the Certificate Insurer as follows:

(a) Due Organization and Existence. The Authority is a joint exercise of powers authority organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Trust Agreement and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Authority has duly authorized the execution and delivery of this Agreement and the Trust Agreement.

(b) Due Execution. The representatives of the Authority executing this Agreement and the Trust Agreement are fully authorized to execute the same.

(c) Valid, Binding and Enforceable Obligations. This Agreement and the Trust Agreement have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority with the Authority, enforceable against the Authority in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

(d) No Conflicts. The execution and delivery hereof and of the Trust Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge

or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Trust Agreement or the financial condition, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations under this Agreement and the Trust Agreement.

(e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Trust Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or the Trust Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Trust Agreement or the financial conditions, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations hereunder and under the Trust Agreement.

ARTICLE III

ISSUANCE OF CERTIFICATES; APPLICATION OF PROCEEDS

SECTION 3.1. The Certificates. The Authority shall cause the Certificates to be executed and delivered under the Trust Agreement in the aggregate principal amount of \$_____. The City hereby approves the Trust Agreement, the assignment thereunder to the Trustee of certain rights of the Authority, and the execution and delivery of the Certificates.

SECTION 3.2. Deposit and Application of Funds. The proceeds received by the Trustee from the sale of the Certificates to the Original Purchaser shall be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.01 of the Trust Agreement. As provided in Section 3.01(c) of the Trust Agreement, a portion of the proceeds of sale of the Certificates shall be deposited into the Project Fund to be applied to finance the acquisition, construction and improvement of the Project as provided in this Agreement and in the Trust Agreement.

SECTION 3.3. Acquisition and Construction of the Project. The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the Project will be completed on or before October 31, 2009. The failure of the Authority to complete the Project by that date does not constitute an Event of Default or a grounds for termination hereof, nor will such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due.

SECTION 3.4. Appointment of City as Agent. The Authority hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the acquisition, construction and installation of the Project. As agent of the Authority hereunder, the City will enter into, administer and enforce all purchase orders or other contracts relating to the Project. Payment of Project Costs will be made by the City from amounts held by the Trustee in the Project Fund in accordance with the provisions of this Agreement and the Trust Agreement.

SECTION 3.5. Plans and Specifications. The City has the right to specify the exact scope, nature and identification of the Project and the respective components thereof. Before any payment is made for the Project or any component thereof from amounts on deposit in the Project Fund, the City must prepare detailed plans and specifications relating thereto. The City may from time to time amend any such plans and specifications, and thereby change or modify the description of the Project or any component thereof.

SECTION 3.6. Certificate of Completion. Upon the completion of the Project, but in any event not later than 30 days following such completion, the City Representative must execute and deliver to the Authority, the Certificate Insurer and the Trustee a written certificate of the City Representative which (a) states that the construction of the Project has been substantially completed, (b) identifies the total Project Costs thereof, and (c) identifies the amounts, if any, to be reserved in the Project Fund for payment of future Project Costs.

ARTICLE IV

SALE OF PROJECT; INSTALLMENT PAYMENTS

SECTION 4.1. Sale. The Authority hereby sells the Project to the City and the City hereby purchases the Project from the Authority, upon the terms and conditions set forth in this Agreement.

SECTION 4.2. Term. The Term of this Agreement commences on the Closing Date, and ends on November 1, 2027, or such later or earlier date on which the Certificates cease to be Outstanding under the Trust Agreement. Notwithstanding the foregoing provisions of this Section 4.2, the Term of this Agreement will not end so long as any amounts are owed to the Certificate Insurer with respect to the Certificate Insurance Policy.

SECTION 4.3. Title. Title to the Project, and each component thereof, will be deemed conveyed by the Authority to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Authority and the City will execute, deliver and cause to be recorded any and all documents reasonably required by the City to consummate such transfer of title.

SECTION 4.4. Installment Payments.

(a) Obligation to Pay. The City hereby agrees to pay to the Authority, as the purchase price of the Project hereunder, the aggregate principal amount of \$_____ together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual Installment Payments in the respective amounts and on the respective Interest Payment Dates specified in Appendix A. On each Installment Payment Date, the City shall deposit with the Trustee, as assignee of the Authority under the Trust Agreement, an amount which, together with amounts then held by the Trustee in the Installment Payment Fund, is equal to the full amount of such Installment Payment coming due and payable on the next Interest Payment Date. The Installment Payments shall be secured by and payable solely from the sources specified in Section 4.5.

Notwithstanding anything herein or in the Trust Agreement to the contrary, amounts paid by the Certificate Insurer under the Certificate Insurance Policy do not relieve the City from its obligations hereunder to pay the Installment Payments when due.

(b) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; *provided, however*, that the City's obligations to compensate and indemnify the Trustee under Sections 4.8 and 5.2 will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2, the principal component of each succeeding Installment Payment will be reduced as provided in such Sections, and the interest component of each remaining Installment Payment will be reduced by

the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby prepaid under Section 4.01(a) of the Trust Agreement.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.4 and Section 4.8, the payment in default will continue as an obligation of the City until fully paid, and the City shall pay the same with interest thereon, from the date of default to the date of payment, at the Overdue Rate.

(d) Assignment. The City understands and agrees that certain rights of the Authority, including but not limited to the right of the Authority to receive payment of the Installment Payments, have been assigned by the Authority to the Trustee in trust under the Trust Agreement, for the benefit of the Certificate Insurer and the Owners of the Certificates, and the City hereby consents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Trust Office, all payments payable by the City under this Section 4.4 and all amounts payable by the City under Article VII.

SECTION 4.5. Pledge and Application of Net Revenues.

(a) Pledge. All of the Net Revenues and all moneys on deposit in any of the funds and accounts established and held by the Trustee under the Trust Agreement are hereby irrevocably pledged to the punctual payment of the Installment Payments. Such pledge constitutes a security interest in and lien on the Net Revenues and such other moneys for the payment of the Installment Payments in accordance with the terms hereof, on a parity with the pledge and lien which secures any Parity Debt.

(b) Deposit of Net Revenues Into Sewer Fund; Transfers to Make Payments. The City has heretofore established the Sewer Fund, which the City agrees to continue to hold and maintain for the purposes and uses set forth herein. The City will deposit all of the Gross Revenues in the Sewer Fund immediately upon receipt, and will apply the amounts in the Sewer Fund as set forth in this Agreement and in any Parity Debt Documents. The City will apply amounts on deposit in the Sewer Fund to pay when due the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs;
- (ii) the Installment Payments and all payments of principal of and interest on any Parity Debt;
- (iii) to the Trustee the amount of any deficiency in the Reserve Fund established for the Certificates and in any reserve fund established for any Parity Debt, the notice of which deficiency has been to the City in accordance with the Trust Agreement and any Parity Debt Documents, respectively;
- (iv) any other payments required to comply with the provisions of this Agreement and any Parity Debt Documents; and
- (v) any other purposes authorized under subsection (d) of this Section.

(c) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on any Parity Debt shall be made without preference or priority among the Installment Payments and such Parity Debt. If the amount of Net Revenues on deposit in the Sewer Fund are any time insufficient to enable the City to pay when due the Installment Payments and the principal of and interest on any Parity Debt, such payments shall be made on a pro rata basis.

(d) Other Uses of Net Revenues Permitted. The City will manage, conserve and apply the Net Revenues on deposit in the Sewer Fund in such a manner that all deposits required to be made under the preceding subsection (b) are made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing hereunder, the City may use and apply moneys in the Sewer Fund for (i) the payment of any subordinate obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the Sewer System, (iii) the prepayment of any other obligations of the City relating to the Sewer System, or (iv) any other lawful purposes of the City.

(e) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City will adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment Payment requires the adoption by the City of any supplemental budget or appropriation, the City will promptly adopt the same. The covenants on the part of the City contained in this subsection (e) are duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (e).

SECTION 4.6. Establishment of Rate Stabilization Fund. The City has the right (but not the obligation) at any time to establish a fund to be held by it and administered in accordance with this Section 4.6, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Sewer System. From time to time the City may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments and any Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw from any amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Sewer Fund in any Fiscal Year for the purpose of paying the Installment Payments or the principal of and interest on any Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Sewer Fund will constitute Gross Revenues for such Fiscal Year (except as otherwise provided herein), and will be applied for the purposes of the Sewer Fund. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments or any Parity Debt. All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City may at any time withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 4.7. Special Obligation of the City; Obligations Absolute. The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder is a

special obligation of the City limited solely to the Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts. No other funds or property of the City are liable for the payment of the Installment Payments and any other amounts coming due and payable hereunder.

The obligations of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority or the Trustee of any obligation to the City or otherwise with respect to the Sewer System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Sewer System, failure to complete the acquisition and construction of the Project by the estimated completion date thereof, sale of the Sewer System, the taking by eminent domain of title to or temporary use of any component of the Sewer System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement.

Nothing contained in this Section 4.7 releases the Authority from the performance of any of the agreements on its part contained herein or in the Trust Agreement, and if the Authority fails to perform any such agreements, the City may institute such action against the Authority as the City deems necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority hereby agrees to cooperate fully with the City and to take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City may request.

SECTION 4.8. Additional Payments. In addition to the Installment Payments, the City shall pay when due the following amounts to the following parties:

- (a) to the Authority, all costs and expenses incurred by the Authority to comply with the provisions of this Agreement and the Trust Agreement; and

(b) to the Trustee upon request therefor, all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Trust Agreement or any related documents;

(c) to the Authority and the Trustee, all amounts required to indemnify the Authority and the Trustee under Section 5.2 hereof and Section 10.03 of the Trust Agreement; and

(d) all costs and expenses of auditors, engineers and accountants.

Subject to the provisions of Section 7.03 of the Trust Agreement, the Additional Payments are payable from, but are not secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the Authority under this Section 4.8, and the obligations of the City under this Section 4.8, survive the termination of this Agreement.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. Disclaimer of Warranties. The Trustee makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Project or any component thereof, or any other representation or warranty with respect to any of the Project or any component thereof. The Authority is not liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Trust Agreement for the existence, furnishing, functioning or use of the Project.

SECTION 5.2. Release and Indemnification Covenants. The City agrees to indemnify the Authority, the Trustee and the Certificate Insurer, and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on or about the Sewer System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Trust Agreement, (c) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Sewer System, and (d) any act or omission of any lessee of the City with respect to the Sewer System. No indemnification is made under this Section 5.2 or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Authority, the Trustee or the Certificate Insurer, or their respective officers, agents, employees, successors or assigns. The provisions of this Section 5.2 survive the expiration of the Term of this Agreement.

SECTION 5.3. Sale or Eminent Domain of Sewer System. Except as provided herein, the City covenants that the Sewer System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement or any Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Sewer System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Certificate Owners or the Trustee with respect to the Net Revenues. If any substantial part of the Sewer System is sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to (i) prepay the Installment Payments on the next available prepayment date under Section 7.2, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

Any amounts received as awards as a result of the taking of all or any part of the Sewer System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition or construction of improvements and extension of the Sewer System, or (b) be applied on a pro rata basis to (i) prepay the Installment Payments on the next available prepayment date under Section 7.2, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

SECTION 5.4. Insurance. The City shall at all times maintain with responsible insurers all such insurance on the Sewer System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Sewer System. All amounts collected from insurance against accident to or destruction of any portion of the Sewer System shall be used, at the option of the City, either (a) to repair or rebuild such damaged or destroyed portion of the Sewer System, or (b) to prepay on a pro rata basis (i) the Installment Payments on the next available prepayment date under Section 7.2, and (ii) any Parity Debt in accordance with the related Parity Debt Documents.

The City will maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the interests of the City, the Authority, the Trustee and the Owners of the Certificates.

Any policy of insurance required under this Section 5.4 may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.5. Records and Accounts. The City will keep proper books of record and accounts of the Sewer System in which complete and correct entries shall be made of all transactions relating to the Sewer System. Said books shall, upon prior request, be subject to the reasonable inspection of the Certificate Insurer and the Owners of not less than 10% of the Outstanding Certificates, or their representatives authorized in writing, upon not less than 2 Business Days' prior notice to the City.

The City will cause the books and accounts of the Sewer System to be audited annually by an Independent Accountant not more than 9 months after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Certificate Insurer and the Certificate Owners at the office of the City and at the Trust Office of the Trustee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.6. Rates and Charges. The City will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Sewer System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

- (a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;
- (b) All Installment Payments and all payments of principal of and interest on any Parity Debt as they become due and payable during such Fiscal Year, without preference or priority;

(c) All amounts, if any, required to restore the balance in the Reserve Fund to the full amount of the Reserve Requirement and to restore the balance in the reserve funds established for any Parity Debt to their required levels; and

(d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Sewer System during each Fiscal Year which are sufficient to yield Net Revenues (including any amounts transferred from a Rate Stabilization Fund) which are at least equal to 115% of the amount described in the preceding clause (b) for such Fiscal Year.

SECTION 5.7. Superior and Subordinate Obligations. The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under Section 5.8, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 5.8. Issuance of Parity Debt. Except for obligations incurred to prepay or discharge the Installment Payments or any Parity Debt, the City may not issue or incur any Parity Debt during the Term hereof unless:

(a) No Event of Default has occurred and is continuing;

(b) The Net Revenues, calculated in accordance with sound accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12 month period selected by the City, in either case verified by an Independent Accountant or a Fiscal Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, at least equal 115% of Maximum Annual Debt Service (taking into account the Parity Debt then proposed to be issued); and

(c) There shall be established from the proceeds of such Parity Debt a reserve fund for the security of such Parity Debt, in an amount equal to the lesser of (i) the amount required to cause the balance in the Reserve Fund, and in all reserve funds established for all Parity Debt (including the Parity Debt then being issued), to be equal to the maximum amount of Installment Payments and Parity Debt coming due and payable in the current or any future Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code, except that the provisions of this subsection (c) do not apply to any Parity Debt which constitutes a loan from the State of California or any of its agencies; and

(d) The trustee or fiscal agent for such Parity Debt is the same entity performing the functions of Trustee under the Trust Agreement.

SECTION 5.9. Operation of Sewer System in Efficient and Economical Manner. The City covenants and agrees to operate the Sewer System in an efficient and economical manner and to operate, maintain and preserve the Sewer System in good repair and working order.

SECTION 5.10. Compliance with Financing Documents. The City will observe and perform all of the obligations imposed on it under this Agreement and under any Parity Debt Documents. The City shall not take any action which constitutes an event of default under and as defined hereunder or under any Parity Debt Documents, and shall not take any action which, if not cured, with the passage of time would constitute an event of default under and as defined hereunder or in any Parity Debt Documents.

SECTION 5.11. Assignment and Amendment Hereof. This Agreement may not be assigned by the City in whole or in part. This Agreement may be amended by the City and the Authority, but only (a) for the purpose of providing for the issuance of any Parity Debt under and in accordance with Section 5.8, or (b) otherwise under the circumstances and to the extent permitted under Sections 8.01 or 8.02 of the Trust Agreement.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.1. Events of Default Defined. The following are Events of Default:

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 60 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority, the Certificate Insurer or the Trustee; *provided, however*, that if the City notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 60 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (e) The occurrence of any event defined to be an event of default under any Parity Debt Documents.

For purposes of determining whether any Event of Default has occurred under and as described in the preceding clause (a), no effect will be given to payments made by the Certificate Insurer under the Certificate Insurance Policy.

SECTION 6.2. Remedies on Default. Whenever any Event of Default has occurred and is continuing, the Trustee as assignee of the Authority has the right, at its option and without any further demand or notice, to take any one or more of the following actions:

- (a) Declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the Overdue Rate from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable. Notwithstanding the foregoing provisions of this subsection (a), however, if, at any time after the principal components of the unpaid Installment Payments have been so declared due and payable under this subsection (a), and before any judgment or decree for the payment of the moneys due has been obtained or entered, the City deposits with the Trustee a sum sufficient to pay all principal components of the Installment Payments

coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the Overdue Rate, and the reasonable expenses of the Trustee (including any fees and expenses of its attorneys), and any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) have been made good, then, and in every such case, the Trustee will rescind and annul such declaration and its consequences. However, no such rescission and annulment extends to or affects any subsequent default, or impairs or exhausts any right or power consequent thereon. As provided in Section 6.6, the Trustee is required to exercise the remedies provided herein in accordance with the Trust Agreement.

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.

(c) As a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Certificate Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment may confer.

SECTION 6.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy will be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or will be construed to be a waiver thereof. Each right and power may be exercised from time to time and as often as the Trustee deems expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VI, it is not necessary to give any notice, other than such notice as may be required in this Article VI or by law.

SECTION 6.4. Agreement to Pay Attorneys' Fees and Expenses. If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Certificates employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred. The provisions of this Section 6.4 survive the expiration of the Term of this Agreement.

SECTION 6.5. No Additional Waiver Implied by One Waiver. If any agreement herein is breached by either party and is thereafter waived by the other party, such waiver is limited to the particular breach so waived and does not waive any other breach.

SECTION 6.6. Trustee, the Certificate Insurer and Certificate Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article VI have been assigned by the Authority to the Trustee under the Trust Agreement, to which assignment the City hereby

consents. The Trustee, the Certificate Insurer and the Owners of the Certificates will exercise such rights and remedies as provided in the Trust Agreement.

ARTICLE VII
PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. Security Deposit. Notwithstanding any other provision hereof, the City may on any date secure the payment of Installment Payments, in whole or in part, by irrevocably depositing with the Trustee an amount of cash which, together with other available amounts, is either (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an Independent Accountant (which opinion is addressed and delivered to the Trustee and the Certificate Insurer), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

If the City posts a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of Net Revenues and all other security provided by this Agreement for said obligations, will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from such security deposit. Said security deposit constitutes a special fund for the payment of such Installment Payments in accordance with the provisions hereof.

Payments made by the Certificate Insurer under the Certificate Insurance Policy will not be considered in determining whether the City has paid and discharged any or all of the Installment Payments under the preceding provisions of this Section 7.1.

SECTION 7.2. Optional Prepayment. The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on which the Certificates are subject to optional prepayment under Section 4.01(a) of the Trust Agreement. Such option shall be exercised by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, (b) the interest component of the Installment Payment required to be paid on or accrued to such date, and (c) the premium (if any) then required to be paid upon the corresponding prepayment of the Certificates under Section 4.01(a) of the Trust Agreement. The Trustee will deposit such prepayment price in the Installment Payment Fund to be applied to the prepayment of Certificates under Section 4.01(a) of the Trust Agreement. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee.

SECTION 7.3. Credit for Amounts on Deposit. If the City prepays the Installment Payments in full under this Article VII, such that the Trust Agreement is discharged by its terms, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Trust Agreement will be credited towards the amounts then required to be so prepaid.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1. Further Assurances. The City will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Authority, the Certificate Insurer or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

SECTION 8.2. Notices. Any notice, request, complaint, demand or other communication under this Agreement must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States of America mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City, the Trustee or the Certificate Insurer may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:*

City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attention: Director of Financial Services
Fax: (408) 586-3110

If to the Trustee:

U.S. Bank Trust National Association
One California Street, Suite 2100
San Francisco, California 94111
Attention: Corporate Trust Services, Mail Station
SF-CA-SF
Fax: (415) 273-4591

If to the Certificate Insurer:

Attention:
Fax:

SECTION 8.3. Governing Law. This Agreement is construed in accordance with and governed by the laws of the State of California.

SECTION 8.4. Binding Effect. This Agreement inures to the benefit of and is binding on the Authority, the City, the Certificate Insurer and their respective successors and assigns, subject to the limitations contained herein.

SECTION 8.5. Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement is for any reason held invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 8.6. Article and Section Headings and References. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and do not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 8.7. Payment on Non-Business Days. Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment will be made on the immediate following Business Day.

SECTION 8.8. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which is an original and all of which together constitute one and the same instrument.

SECTION 8.9. Waiver of Personal Liability. No member of the City Council, officer, agent or employee of the City has any individual or personal liability for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement. Nothing herein relieves any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

SECTION 8.10. Trustee and the Certificate Insurer as Third Party Beneficiaries. The Trustee and the Certificate Insurer are hereby made a third party beneficiaries hereof and shall be entitled to the benefits of this Agreement with the same force and effect as if the Trustee and the Certificate Insurer were a party hereto.

IN WITNESS WHEREOF, the Authority and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

MILPITAS PUBLIC FINANCING AUTHORITY,
as Seller

By _____

CITY OF MILPITAS, *as Purchaser*

By _____

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Installment Payment Date⁽¹⁾</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
May 1, 2007			
November 1, 2007			
May 1, 2008			
November 1, 2008			
May 1, 2009			
November 1, 2009			
May 1, 2010			
November 1, 2010			
May 1, 2011			
November 1, 2011			
May 1, 2012			
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November 1, 2017			
May 1, 2018			
November 1, 2018			
May 1, 2019			
November 1, 2019			
May 1, 2020			
November 1, 2020			
May 1, 2021			
November 1, 2021			
May 1, 2022			
November 1, 2022			
May 1, 2023			
November 1, 2023			
May 1, 2024			
November 1, 2024			

<u>Installment Payment Date⁽¹⁾</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
May 1, 2025			
November 1, 2025			
May 1, 2026			
November 1, 2026			
May 1, 2027			
November 1, 2027			

- (1) Installment Payment Dates are the third (3rd) Business Day immediately preceding each Interest Payment Date shown in the table.

APPENDIX B

DESCRIPTION OF PROJECT

Replacement of the main sewage pump station located at Dixon Landing Road and North McCarthy Boulevard, together with installation of a grinder and the construction of a operations building, and any other improvements to the Sewer System approved by the City Council.

NOTICE INVITING BIDS

\$ _____ *

**CERTIFICATES OF PARTICIPATION
2006 SERIES A
(CITY OF MILPITAS SEWER FINANCING)
[(BANK QUALIFIED)]**

NOTICE IS HEREBY GIVEN by the City of Milpitas (the "City") that bids will be for the purchase of \$ _____ * principal amount of Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) (the "Certificates"). The bids will be received at the place, in the manner and up to the time and date specified below, provided, however, that the City reserves the right to postpone or change the sale date upon twenty (20) hours prior notice delivered via The Bond Buyer Wire or Bloomberg Business News:

DATE AND TIME: 9:00 A.M. California Time on _____, November __, 2006, and, so long as a proposal has not theretofore been accepted by the City, at such time on any date thereafter without further advertising.

ELECTRONIC BIDS: Bid proposals must be submitted electronically through PARITY[®] as provided in the Official Notice Inviting Bids.

The Certificates will be delivered under the provisions of a Trust Agreement (the "Trust Agreement") among the City, the Milpitas Public Financing Authority (the "Authority") and U.S. Bank National Association, as trustee (the "Trustee"). The Certificates represent the direct, undivided fractional interests of the owners thereof in Installment Payments to be made by the City under an Installment Sale Agreement (the "Installment Sale Agreement") between the Authority and the City. The Certificates are more particularly described in the proposed form of the Trust Agreement on file with the City (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

DESCRIPTION OF THE CERTIFICATES

PURPOSE: The proceeds of the Certificates will be applied by the City to finance the acquisition and construction of certain improvements to the sewage collection system of the City, including the main sewage pump station, the installation of a grinder and the construction of an operations building (the "Sewer Enterprise").

ISSUE; BOOK-ENTRY FORM: The Certificates will be issued in the aggregate principal amount of \$ _____ *, in the form of fully registered Certificates without coupons. The Certificates will be dated as of the delivery date, and will be issued in minimum denominations of \$5,000. The Certificates will be issued in a book entry only system with no physical distribution of the Certificates made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Certificates. The Certificates will be registered in the

**Preliminary; subject to adjustment as herein described.*

name of Cede & Co., as nominee for DTC, on behalf of the participants in the DTC system and the subsequent beneficial owners of the Certificates.

MATURITIES: The Certificates will mature, or be subject to mandatory sinking fund prepayment, on each of the dates and in the amounts, as set forth in the following table. The final principal amount of the Certificates, and the final amount of each maturity of the Certificates, will be subject to increase or reduction as described below under the heading “Adjustment of Principal Amounts”. *Each bidder is required to specify in its bid whether, for any particular year, the Certificates will mature or, alternately, be subject to mandatory sinking fund prepayment in such year.*

Maturity <u>(Nov. 1)</u>	Principal <u>Amount</u>	Maturity <u>(Nov. 1)</u>	Principal <u>Amount</u>
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The schedule of principal maturities is subject to adjustment based upon the interest rates specified in the winning bid, as described below under “ADJUSTMENT OF PRINCIPAL AMOUNTS.”

PAYMENT PROVISIONS: Interest represented by the Certificates will be payable on each May 1 and November 1, commencing May 1, 2007 (the “Interest Payment Dates”), to the registered owners by check or draft of the Trustee or, in the case of any registered owner of Certificates in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer. Principal of and premium (if any) on any Certificate will be paid upon presentation and surrender thereof at the corporate trust office of the Trustee in St. Paul, Minnesota. The principal, interest and premium (if any) represented by the Certificates are payable in lawful money of the United States of America.

OPTIONAL PREPAYMENT: The Certificates maturing on or before November 1, 2016, are not subject to prepayment prior to their respective stated maturities. The Certificates maturing on or after November 1, 2017, are subject to prepayment prior to maturity, at the option of the City, in whole or in part, from any available source of funds, on November 1, 2016, and on any date thereafter, at a prepayment price (expressed as a percentage of the principal amount of Certificates to be prepaid) as set forth in the following table, together with accrued interest represented thereby to the date fixed for prepayment.

<u>Prepayment Dates</u>	<u>Prepayment Price</u>
November 1, 2016 through October 31, 2017	101%
November 1, 2017 and thereafter	100

SINKING FUND PREPAYMENT: Any bidder may, at its option, specify that one or more maturities of the Certificates will consist of term Certificates which are subject to mandatory sinking fund prepayment in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. If the bid of the successful bidder specifies that any maturity of Certificates will be term Certificates, such term Certificates will be subject to mandatory sinking fund prepayment on November 1 in each year so designated in the bid, in the respective amounts for such years as set forth above under the heading "MATURITIES", at a prepayment price equal to the principal amount thereof to be prepaid together with accrued interest thereon to the prepayment date, without premium.

SECURITY: The Certificates represent the direct, undivided fractional interests of the owners thereof in Installment Payments to be made by the City under the Installment Sale Agreement. The obligation of the City to make such Installment Payments is payable from and secured by a pledge of the net revenues received by the City from the Sewer Enterprise on a parity with certain outstanding obligations of the City. The City has the right to issue additional obligations on a parity with the Installment Payments, upon satisfaction of certain requirements set forth in the Installment Sale Agreement. Bidders are referred to the Preliminary Official Statement for further particulars concerning the security for the Certificates.

BOND INSURANCE; The City has received a commitment to issue a policy of municipal bond insurance for the Certificates from _____. The premium for such insurance will be paid by the City from the proceeds of the Certificates, and bidders do not have the option of electing not to obtain such insurance.

TAX-EXEMPT STATUS; BANK QUALIFICATION: In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, bond counsel to the City, interest represented by the Certificates is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual and corporate alternative minimum taxes, although it is included in certain income and earnings in computing the alternative minimum tax imposed on certain corporations. In the further opinion of bond counsel, the Certificates are "qualified tax-exempt obligations" within the meaning of Section 265 of the Internal Revenue Code of 1986. In the opinion of Bond Counsel, such interest is also exempt from California personal income taxes. In the event that prior to the delivery of the Certificates (a) the interest represented by other obligations of the same type and character shall be declared to be taxable (either at the time of such declaration or at any future date) under any federal income tax laws, either by the terms of such laws or by ruling of a federal income tax authority or official which is followed by the Internal Revenue Service, or by decision of any federal court, or (b) any federal income tax law is adopted which will have a substantial adverse effect upon owners of the Certificates as such, the successful bidder for the Certificates may, at its option, prior to the tender of the Certificates, be relieved of its obligation under the contract to purchase the Certificates, and in such case the deposit accompanying its proposal will be returned.

BOND COUNSEL OPINION: The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, approving the validity of the Certificates and the related financing documents, will be furnished to the purchaser of the Certificates without cost. A copy of the proposed opinion of that firm is attached as an appendix to the Preliminary Official Statement. Bidders are referred to the Preliminary Official Statement for further detail.

FURTHER INFORMATION: A copy of the Preliminary Official Statement describing the Certificates, and any other information concerning the proposed financing, will be furnished upon request to the financial advisor to the City: E. Wagner & Associates, Inc., 5990 Stoneridge Drive, Suite 103, Pleasanton, California 94588, (925) 416-1200, e-mail: ewagner@e-wagner.net, website: www.e-wagner.net. The Notice Inviting Bids, Bid Form and Preliminary Official Statement are available from financial advisor and may also be viewed on the MuniAuction website at "http://www.MuniAuction.com".

TERMS OF SALE

SUBMISSION OF BIDS: Bids may be delivered electronically for receipt not later than the time set forth above. *All bids must be accompanied by a good faith deposit as more fully described below under the caption "GOOD FAITH DEPOSIT".* All bids must be submitted either electronically as described below to the number set forth below, provided that such electronic bid, and the good faith deposit (described below) must be received before 9:00 a.m. on the date set for receipt of bids. Neither the City nor its representatives take any responsibility for any difficulties in receiving electronic transmittals prior to the deadline for receipt of bids.

ELECTRONIC BIDS: Electronic bids must conform with the procedures established by Parity. Solely as an accommodation to bidders, electronic bids will be received exclusively through Parity in accordance with this Official Notice Inviting Bids until 9:00 a.m. California time, but no bid will be received after the time specified for receiving bids. To the extent any instructions or directions set forth in Parity conflict with this Official Notice Inviting Bids, the terms of this Official Notice Inviting Bids shall control. For further information about Parity, potential bidders may contact i-Deal LLC at 1359 Broadway, 2nd Floor, New York, New York 10018; Telephone: (212) 849-5021.

FORM OF BID; MINIMUM PURCHASE PRICE: Each proposal must be for not less than all of the Certificates hereby offered for sale. The purchase price to be paid for the Certificates may not be less than 99.00% of the par value thereof. No bid will be entertained which provides for a discount greater than 1.00% of par value on the sale of the Certificates.

DESIGNATION OF INTEREST RATES: Each bidder must specify the rate or rates of interest to be represented by the Certificates. A bidder will be permitted to bid different rates of interest for each maturity of Certificates; but (i) no Certificate may represent more than one rate of interest; (ii) interest represented by each Certificate will be computed from the delivery date to its stated maturity at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; (iii) all Certificates maturing at any one time must represent the same rate of

interest; and (iv) any premium must be paid as part of the purchase price, and no proposal will be accepted which contemplates the waiver of any interest or other concession by the bidder as a substitute for payment in full of the purchase price. In addition, each bid must comply with the following requirements:

- 1) each interest rate specified must be in a multiple of 1/20% or 1/8%;
- 2) the maximum rate bid on any maturity of the Certificates may not exceed the minimum rate bid on any maturity of the Certificates by more than 4%; and
- 3) the maximum rate bid on any maturity of the Certificates may not exceed 12% per annum.

DETERMINATION OF BEST BID: The Certificates will be awarded to the responsible bidder whose bid produces the lowest true interest rate on the Certificates. The true interest rate specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Certificates from the date of original delivery thereof (which is assumed for computational purposes to be November __, 2006), to their respective maturity dates or mandatory sinking fund prepayment dates, produces an amount equal to the purchase price specified in such bid. For purposes of computing the true interest rate represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Certificates plus any premium or less any discount specified in such proposal, and the true interest rate shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Certificates.

ADJUSTMENT OF PRINCIPAL MATURITIES: The City reserves the right to increase or decrease the principal amount of any maturity of the Certificates (or, in the case of the term Certificates, the principal amount thereof which is subject to mandatory sinking fund prepayment on November 1 in any year). Notice of such increase or decrease shall be given to the successful bidder as soon as practicable following the notification of award, as described below. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

RIGHT OF REJECTION: The City reserves the right, in its discretion, to reject any and all bids and to the extent not prohibited by law to waive any irregularity or informality in any bid.

PROMPT AWARD: The City Council of the City has authorized an officer of the City to accept the best responsible bid for the purchase of the Certificates and to accept such bid, for and in the name of the City, by notice to the successful bidder. If two or more bids setting forth identical interest rates and premium, if any, are received, such officer may exercise discretion and judgment in making the award. Such officer may also reject any and all bids and waive any irregularity or informality in any bid. The sale of the Certificates or rejection of all bids will be determined, and notice thereof given, not later than 12 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the successful bidder; provided, that the award may be made after the expiration of the specified time if the bidder shall not have given the City notice in writing of the withdrawal of such proposal.

RIGHT TO CANCEL, POSTPONE OR RESCHEDULE SALE: The City reserves the right to cancel, postpone or reschedule the sale of the Certificates. Any such cancellation, postponement or rescheduling will be announced through The Bond Buyer Wire or Bloomberg Business News not later than 1:00 p.m., California time, on the last business day prior to any announced date for receipt of bids. If any date fixed for the receipt of bids and the sale of the Certificates is postponed or rescheduled, any alternative sale date will be announced through The Bond Buyer Wire or Bloomberg Business News at least 24 hours prior to such alternative sale date. On any such alternative sale date, bidders must submit a bid for the purchase of the Certificates in conformity in all respects with the provisions of this Official Notice Inviting Bids except for the date of sale and except for the changes announced through The Bond Buyer Wire or Bloomberg Business News.

PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY: It is expected that the Certificates will be delivered to DTC for the account of the successful bidder within 21 days from the date of sale thereof. The successful bidder will have the right, at the successful bidder's option, to cancel the contract of purchase if the Certificates are not tendered for delivery within 60 days from the date of the sale thereof, and in such event the successful bidder shall be entitled to the return of the deposit accompanying its bid.

GOOD FAITH DEPOSIT: A good faith deposit (the "Deposit") in the form of a certified or cashier's check or a Financial Surety Bond in the amount of \$100,000 payable to the order of the City, is required for each bid to be considered. If a check is used, it must be drawn on a California bank and must accompany the bid. If a Financial Surety Bond is used, it must be from an insurance company licensed to issue such a bond in the State of California, and such bond must be submitted to E. Wagner & Associates, Inc., as financial advisor to the City prior to the opening of the bids. The Financial Surety Bond must identify each bidder whose Deposit is guaranteed by such Financial Surety Bond. If the Certificates are awarded to a bidder utilizing a Financial Surety Bond, then such bidder must submit its Deposit to said financial advisor in the form of a cashier's check (or wire transfer such amount as instructed by the financial advisor) not later than 11:00 a.m. California time on the next business day following the award. If such Deposit is not received by that time, the Financial Surety Bond may be drawn by the City to satisfy the Deposit requirement. No interest represented by the Deposit will accrue to the purchaser. The amount of the Deposit will be applied as a credit towards the payment of the purchase price by the successful bidder. If after the award of the Certificates, the successful bidder fails to complete its purchase on the terms stated in its proposal, the full amount of the good faith deposit will be retained by the City.

STATEMENT OF TRUE INTEREST RATE: Each bidder is requested, but not required, to state in its proposal the percentage true interest rate represented by its proposal, determined as described above, which shall be considered as informative only and not binding on either the bidder or the City.

CERTIFICATION OF REOFFERING PRICE: The successful bidder will be required, as a condition to the delivery of the Certificates by the City, to deliver to the City a certificate, in form and substance satisfactory to the City, stating (i) that, as of the date of award, the Certificates were

expected to be reoffered in a bona fide public offering, (ii) the initial offering price at which a substantial amount (at least 10%) of each maturity of the Certificates were sold to the public, and (iii) that no Certificates of a single maturity were offered at one price to the general public and at a discount from that price to institutional or other investors.

NO LITIGATION: There is no litigation pending concerning the validity of the Certificates, the corporate existence of the City, or the entitlement of the officers thereof to their respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the time of delivery of the Certificates.

CUSIP NUMBERS AND OTHER FEES: It is anticipated that CUSIP numbers will be printed on the Certificates, but neither the failure to print such numbers on any Certificates nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Certificates in accordance with the terms hereof. All expenses in relation to the printing of CUSIP numbers on the Certificates will be paid for by the City; *provided, however*, that the CUSIP Service Bureau charge for the assignment of said numbers will be the responsibility of and will be paid for by the purchaser. The successful bidder will also be required to pay all fees required by the Depository Trust Company, Bond Market Association, Municipal Securities Rulemaking Board, and other similar entity imposing a fee in connection with the issuance of the Certificates (including the California Debt and Investment Advisory Commission as described below).

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES: All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Certificates shall be the responsibility of the purchaser of the Certificates.

OFFICIAL STATEMENT: The City has approved a Preliminary Official Statement relating to the Certificates. Copies of such Preliminary Official Statement will be distributed to any bidder, upon request, prior to the sale in a form “deemed final” by the City for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”). Within seven business days from the sale date, the City will deliver to the purchaser copies of the final Official Statement, executed by an authorized representative of the City and dated the date of delivery thereof to the purchaser, in sufficient number to allow the purchaser to comply with paragraph (b)(4) of the Rule and to satisfy the Municipal Securities Rulemaking Board (the “MSRB”) Rule G-32 or any other rules adopted by the MSRB, which shall include information permitted to be omitted by paragraph (b)(1) of the Rule and such other amendments or supplements as shall have been approved by the City (the “Final Official Statement”). The purchaser agrees that it will not confirm the sale of any Certificates unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. The City will furnish to the successful bidder, at no charge, not up to 150 copies of the Official Statement for use in connection with any resale of the Certificates.

DISCLOSURE COUNSEL OPINION: The City has retained the firm of Jones Hall, A Professional Law Corporation, to serve as disclosure counsel in connection with the Certificates. As disclosure counsel, such firm will render an opinion to the City and the winning bidder for the Certificates to the effect that based on their participation in the preparation of the Official

Statement, nothing has come to their attention which would lead them to believe that the Official Statement (except for certain financial statements, statistical data and other information) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

CONTINUING DISCLOSURE. In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City has committed to undertake, under the Trust Agreement and a Continuing Disclosure Certificate, to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the Preliminary Official Statement and will also be set forth in the final Official Statement. Such Continuing Disclosure Certificate will be a document required to be delivered at closing by the City, and the failure by the City to deliver such document in form and substance acceptable to Bond Counsel and the successful bidder will relieve the successful bidder of its obligation to purchase the Certificates.

ADDITIONAL INFORMATION, For additional information concerning the sale of the Certificates or for a copy of the Preliminary Official Statement relating to the Certificates, contact the City's Financial Advisor, E. Wagner & Associates, Inc., 5990 Stoneridge Drive, Suite 103, Pleasanton, California 94588, (925) 416-1200, e-mail: dnguyen@e-wagner.net or ewagner@netvista.net.

Dated: November __, 2006

CITY OF MILPITAS

By /s/ Emma Karlan
Director of Financial Services
City of Milpitas

NOTICE OF INTENTION TO SELL CERTIFICATES

NOT TO EXCEED
\$_____*
CERTIFICATES OF PARTICIPATION
2006 SERIES A
(CITY OF MILPITAS SEWER FINANCING)

NOTICE IS HEREBY GIVEN by the City of Milpitas (the "City") that bids will be received for the purchase of not to exceed \$_____ * principal amount of Certificates of Participation, 2006 Series A (City of Milpitas Sewer Financing) (the "Certificates"). The bids will be received at the place, in the manner and up to the time and date specified below, provided, however, that the City reserves the right to postpone or change the sale date upon prior notice delivered via The Bond Buyer Wire or Bloomberg Business News in accordance with the Notice Inviting Bids (described below):

DATE AND TIME: 9:00 A.M. California Time on _____,
November __, 2006, and, so long as a proposal has
not theretofore been accepted by the City, at such
time on any date thereafter without further
advertising.

ELECTRONIC BIDS: Bid proposals must be submitted electronically
through PARITY® as provided in the Official
Notice Inviting Bids.

The sale of the Certificates will be conducted upon the terms and conditions set forth in the Notice Inviting Bids. Such Notice Inviting Bids and the preliminary form of the Official Statement describing the Bonds may be obtained from E. Wagner & Associates, Inc., 5990 Stoneridge Drive, Suite 103, Pleasanton, California 94588, (925) 416-1200, e-mail: ewagner@e-wagner.net, [website](http://www.e-wagner.net): www.e-wagner.net.

*Preliminary; subject to change.

*Preliminary; subject to adjustment as herein described.